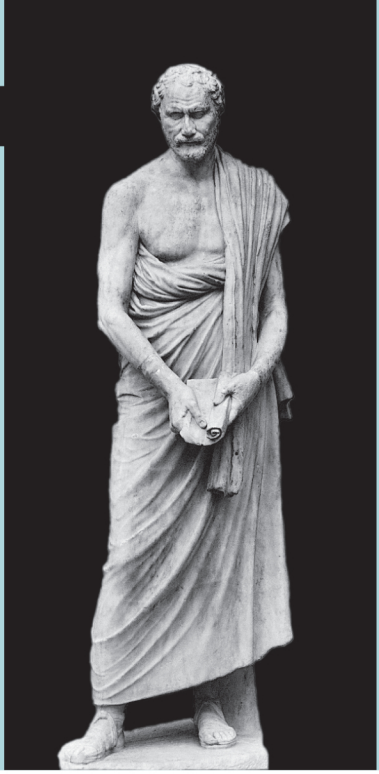
THE ORATORY OF CLASSICAL GREECE

MICHAEL GAGARIN ⟡ SERIES EDITOR



DEMOSTHENES, SPEECHES 39–49

Translated by Adele C. Scafuro

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THE ORATORY OF CLASSICAL GREECE

Translated with Notes • Michael Gagarin, Series Editor

VOLUME 13

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Translated with introduction and notes by

Adele C. Scafuro

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For my cousins, on my father's side, and on my mother's side,
and also the children of these cousins, as far as cousinhood lasts!

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SERIES EDITOR'S PREFACE

This is the thirteenth volume in a series of translations of *The Oratory of Classical Greece.* The aim of the series is to make available primarily for those who do not read Greek up-to-date, accurate, and readable translations with introductions and explanatory notes of all the surviving works and major fragments of the Attic orators of the classical period (ca. 420–320 BC): Aeschines, Andocides, Antiphon, Demosthenes, Dinarchus, Hyperides, Isaeus, Isocrates, Lycurgus, and Lysias. This volume contains eleven of the private speeches attributed to Demosthenes, including many that deal with the family and inheritance. From them we learn about family structures, adoption, and the relation of the family to civic organizations, especially the deme and the phratry.

This volume, like the others in the series, has benefited greatly from the careful attention of many at the University of Texas Press, including Director Joanna Hitchcock, Humanities Editor Jim Burr, manuscript editor Lynne Chapman, and copy editor Nancy Moore. As always, they have been a pleasure to work with.

—M.G.

TRANSLATOR'S PREFACE

A handwritten draft of this translation was completed at Rethymno in Crete in 1997 and was put on the back burner, so to speak, for many years, as the study of Attic inscriptions and the writing of a book on Athenian public procedure competed for my attention. This occurred mostly but not exclusively during periods of leave from Brown University, spent at the American School of Classical Studies at Athens and at the Leopold Wenger-Institut für antike Rechtsgeschichte und Papyrusforschung in Munich. The different projects that I have worked on over these dozen years have blended together, for me, at any rate, awesomely; I suppose I could call it a kind of sociology of law, and its texture is language.

Now, in finishing this translation and its notes and essays, I am grateful to earlier scholars who have worked with Demosthenes' courtroom idiom. I am especially indebted to the learned notes and translation of L. Gernet (I envy him his idiomatic rendition of particles for which French provides a more fertile soil than English), and likewise am I indebted to the notes and translation of C. R. Kennedy (he dances so easily with the intricacies of Demosthenic clausulae).

Among the living, I thank Alan Boegehold for reading various portions of this translation as it progressed and for discussing minute questions of text, translation, and procedure. I thank Jeanmarie Stinson, a graduate student in the Classics Department at Brown who served as a sample reader, and also my undergraduates who served as a sounding board for working out explanations for intricate or simply odd procedures. I thank Mitchell

Parks, another graduate student, and Suzanne Bertrand, our Administrative Assistant, for help with the manuscript. I thank, too, the anonymous reader for the press, for thoughtful criticisms, one of which, regarding the Victorian sound of certain word choices, for example, "first-class scoundrel," led to an interesting discussion with my students of ancient Greek on contemporary English idiom: how are we today to render such words as, for example, *ponēros*? "Knave" and "villain" indeed have an old-fashioned sound—not that my students suggested these; for the terms they did suggest are simply not printable. Contemporary English lacks "proper" derogatory terms: it seems that one must choose between a Victorian sound and opprobrious slang.

Thanks are also due to the staff at the University of Texas Press for their patience and promptness, and especially to Nancy Moore, for executing the task of copyediting so carefully and graciously; to Diane Mankedick, for expert and masterly proofreading, which has saved the translator from embarrassment and the reader from confusion; and to Lynne F. Chapman, for supervising the production in so exemplary a way. My greatest debt of thanks is to Michael Gagarin, the series editor, both for his patience and for his careful reading and comments on the entire manuscript (almost, indeed, on every page). He has been a remarkable editor not simply because he corrects errors and suggests tidier ways of saying something but because he has been so engaged with the text. It is a pleasure and a privilege to absorb an editor's observations and questions when they are rooted so profoundly in the quest for knowing and communicating the way Athenian law worked.

—A.C.S.

SERIES INTRODUCTION

Greek Oratory

By Michael Gagarin

ORATORY IN CLASSICAL ATHENS

From as early as Homer (and undoubtedly much earlier) the Greeks placed a high value on effective speaking. Even Achilles, whose greatness was primarily established on the battlefield, was brought up to be "a speaker of words and a doer of deeds" (*Iliad* 9.443); and Athenian leaders of the sixth and fifth centuries,[1] such as Solon, Themistocles, and Pericles, were all accomplished orators. Most Greek literary genres—notably epic, tragedy, and history—underscore the importance of oratory by their inclusion of set speeches. The formal pleadings of the envoys to Achilles in the *Iliad*, the messenger speeches in tragedy reporting events like the battle of Salamis in Aeschylus' *Persians* or the gruesome death of Pentheus in Euripides' *Bacchae*, and the powerful political oratory of Pericles' funeral oration in Thucydides are but a few of the most notable examples of the Greeks' never-ending fascination with formal public speaking, which was to reach its height in the public oratory of the fourth century.

In early times, oratory was not a specialized subject of study but was learned by practice and example. The formal study of rhetoric as an "art" (*technē*) began, we are told, in the middle of the fifth century in Sicily with the work of Corax and his pupil Tisias.[2] These two are scarcely more than names to us, but

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[1]All dates in this volume are BC unless the contrary is either indicated or obvious.

[2]See Kennedy 1963: 26–51. Cole 1991 has challenged this traditional picture, arguing that the term "rhetoric" was coined by Plato to designate and denigrate an activity he strongly opposed. Cole's own reconstruction is not

another famous Sicilian, Gorgias of Leontini (ca. 490–390), developed a new style of argument and is reported to have dazzled the Athenians with a speech delivered when he visited Athens in 427. Gorgias initiated the practice, which continued into the early fourth century, of composing speeches for mythical or imaginary occasions. The surviving examples reveal a lively intellectual climate in the late fifth and early fourth centuries, in which oratory served to display new ideas, new forms of expression, and new methods of argument.[3] This tradition of "intellectual" oratory was continued by the fourth-century educator Isocrates and played a large role in later Greek and Roman education.

In addition to this intellectual oratory, at about the same time the practice also began of writing speeches for real occasions in public life, which we may designate "practical" oratory. For centuries Athenians had been delivering speeches in public settings (primarily the courts and the Assembly), but these had always been composed and delivered impromptu, without being written down and thus without being preserved. The practice of writing speeches began in the courts and then expanded to include the Assembly and other settings. Athens was one of the leading cities of Greece in the fifth and fourth centuries, and its political and legal systems depended on direct participation by a large number of citizens; all important decisions were made by these large bodies, and the primary means of influencing these decisions was oratory.[4] Thus, it is not surprising that oratory flourished in Athens,[5] but it may not be immediately obvious why it should be written down.

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without problems, but he does well to remind us how thoroughly the traditional view of rhetoric depends on one of its most ardent opponents.

[3]Of these only Antiphon's Tetralogies are included in this series. Gorgias' *Helen* and *Palamedes*, Alcidamas' *Odysseus*, and Antisthenes' *Ajax* and *Odysseus* are translated in Gagarin and Woodruff 1995.

[4]Yunis 1996 has a good treatment of political oratory from Pericles to Demosthenes.

[5]All our evidence for practical oratory comes from Athens, with the exception of Isocrates 19, written for a trial in Aegina. Many speeches were undoubtedly delivered in courts and political forums in other Greek cities, but it may be that such speeches were written down only in Athens.

The pivotal figure in this development was Antiphon, one of the fifth-century intellectuals who are often grouped together under the name "Sophists."[6] Like some of the other sophists he contributed to the intellectual oratory of the period, but he also had a strong practical interest in law. At the same time, Antiphon had an aversion to public speaking and did not directly involve himself in legal or political affairs (Thucydides 8.68). However, he began giving general advice to other citizens who were engaged in litigation and were thus expected to address the court themselves. As this practice grew, Antiphon went further, and around 430 he began writing out whole speeches for others to memorize and deliver. Thus began the practice of "logography," which continued through the next century and beyond.[7] Logography particularly appealed to men like Lysias, who were metics, or noncitizen residents of Athens. Since they were not Athenian citizens, they were barred from direct participation in public life, but they could contribute by writing speeches for others.

Antiphon was also the first (to our knowledge) to write down a speech he would himself deliver, writing the speech for his own defense at his trial for treason in 411. His motive was probably to publicize and preserve his views, and others continued this practice of writing down speeches they would themselves deliver in the courts and (more rarely) the Assembly.[8] Finally, one other type of practical oratory was the special tribute delivered on certain important public occasions, the best known of which is the funeral oration. It is convenient to designate these three types of

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[6]The term "sophist" was loosely used through the fifth and fourth centuries to designate various intellectuals and orators, but under the influence of Plato, who attacked certain figures under this name, the term is now used of a specific group of thinkers; see Kerferd 1981.

[7]For Antiphon as the first to write speeches, see Photius, *Bibliotheca* 486a7–11 and [Plut.], *Moralia* 832c–d. The latest extant speech can be dated to 320, but we know that at least one orator, Dinarchus, continued the practice after that date.

[8]Unlike forensic speeches, speeches for delivery in the Assembly were usually not composed beforehand in writing, since the speaker could not know exactly when or in what context he would be speaking; see further Trevett 1996.

oratory by the terms Aristotle later uses: forensic (for the courts), deliberative (for the Assembly), and epideictic (for display).[9]

THE ORATORS

In the century from about 420 to 320, dozens—perhaps even hundreds—of now unknown orators and logographers must have composed speeches that are now lost, but only ten of these men were selected for preservation and study by ancient scholars, and only works collected under the names of these ten have been preserved. Some of these works are undoubtedly spurious, though in most cases they are fourth-century works by a different author rather than later "forgeries." Indeed, modern scholars suspect that as many as seven of the speeches attributed to Demosthenes may have been written by Apollodorus, son of Pasion, who is sometimes called "the eleventh orator."[10] Including these speeches among the works of Demosthenes may have been an honest mistake, or perhaps a bookseller felt he could sell more copies of these speeches if they were attributed to a more famous orator.

In alphabetical order the Ten Orators are as follows:[11]

- AESCHINES (ca. 390–ca. 322) rose from obscure origins to become an important Athenian political figure, first an ally, then a bitter enemy of Demosthenes. His three speeches all concern major public issues. The best known of these (Aes. 3) was delivered at the trial in 330, when Demosthenes responded with *On the Crown* (Dem. 18). Aeschines lost the case and was forced to leave Athens and live the rest of his life in exile.

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[9] *Rhetoric* 1.3. Intellectual orations, like Gorgias' *Helen*, do not easily fit into Aristotle's classification. For a fuller (but still brief) introduction to Attic oratory and the orators, see Edwards 1994.

[10] See Trevett 1992.

[11] The Loeb volumes of *Minor Attic Orators* also include the prominent Athenian political figure Demades (ca. 385–319), who was not one of the Ten; but the only speech that has come down to us under his name is a later forgery. It is possible that Demades and other fourth-century politicians who had a high reputation for public speaking did not put any speeches in writing, especially if they rarely spoke in the courts (see above n. 8).

- ANDOCIDES (ca. 440–ca. 390) is best known for his role in the scandal of 415, when just before the departure of the fateful Athenian expedition to Sicily during the Peloponnesian War (431–404), a band of young men mutilated statues of Hermes, and at the same time information was revealed about the secret rites of Demeter. Andocides was exiled but later returned. Two of the four speeches in his name give us a contemporary view of the scandal: one pleads for his return, the other argues against a second period of exile.
- ANTIPHON (ca. 480–411), as already noted, wrote forensic speeches for others and only once spoke himself. In 411 he participated in an oligarchic coup by a group of 400, and when the democrats regained power he was tried for treason and executed. His six surviving speeches include three for delivery in court and the three Tetralogies—imaginary intellectual exercises for display or teaching that consist of four speeches each, two on each side. All six of Antiphon's speeches concern homicide, probably because these stood at the beginning of the collection of his works. Fragments of some thirty other speeches cover many different topics.
- DEMOSTHENES (384–322) is generally considered the best of the Attic orators. Although his nationalistic message is less highly regarded today, his powerful mastery of and ability to combine many different rhetorical styles continues to impress readers. Demosthenes was still a child when his wealthy father died. The trustees of the estate apparently misappropriated much of it, and when he came of age, he sued them in a series of cases (27–31), regaining some of his fortune and making a name as a powerful speaker. He then wrote speeches for others in a variety of cases, public and private, and for his own use in court (where many cases involved major public issues), and in the Assembly, where he opposed the growing power of Philip of Macedon. The triumph of Philip and his son Alexander the Great eventually put an end to Demosthenes' career. Some sixty speeches have come down under his name, about a third of them of questionable authenticity.
- DINARCHUS (ca. 360–ca. 290) was born in Corinth but spent much of his life in Athens as a metic (a noncitizen resident).

His public fame came primarily from writing speeches for the prosecutions surrounding the Harpalus affair in 324, when several prominent figures (including Demosthenes) were accused of bribery. After 322 he had a profitable career as a logographer.

- HYPERIDES (389/8–322) was a political leader and logographer of so many different talents that he was called the pentathlete of orators. He was a leader of the Athenian resistance to Philip and Alexander and (like Demosthenes) was condemned to death after Athens' final surrender. One speech and substantial fragments of five others have been recovered from papyrus remains; otherwise, only fragments survive.

- ISAEUS (ca. 415–ca. 340) wrote speeches on a wide range of topics, but the eleven complete speeches that survive, dating from ca. 390 to ca. 344, all concern inheritance. As with Antiphon, the survival of these particular speeches may have been the result of the later ordering of his speeches by subject; we have part of a twelfth speech and fragments and titles of some forty other works. Isaeus is said to have been a pupil of Isocrates and the teacher of Demosthenes.

- ISOCRATES (436–338) considered himself a philosopher and educator, not an orator or rhetorician. He came from a wealthy Athenian family but lost most of his property in the Peloponnesian War, and in 403 he took up logography. About 390 he abandoned this practice and turned to writing and teaching, setting forth his educational, philosophical, and political views in essays that took the form of speeches but were not meant for oral delivery. He favored accommodation with the growing power of Philip of Macedon and panhellenic unity. His school was based on a broad concept of rhetoric and applied philosophy; it attracted pupils from the entire Greek world (including Isaeus, Lycurgus, and Hyperides) and became the main rival of Plato's Academy. Isocrates greatly influenced education and rhetoric in the Hellenistic, Roman, and modern periods until the eighteenth century.

- LYCURGUS (ca. 390–ca. 324) was a leading public official who restored the financial condition of Athens after 338 and played

a large role in the city for the next dozen years. He brought charges of corruption or treason against many other officials, usually with success. Only one speech survives.

- LYSIAS (ca. 445–ca. 380) was a metic—an official resident of Athens but not a citizen. Much of his property was seized by the Thirty during their short-lived oligarchic coup in 404–403. Perhaps as a result he turned to logography. More than thirty speeches survive in whole or in part, though the authenticity of some is doubted. We also have fragments or know the titles of more than a hundred others. The speeches cover a wide range of cases, and he may have delivered one himself (Lys. 12), on the death of his brother at the hands of the Thirty. Lysias is particularly known for his vivid narratives, his *ēthopoiïa*, or "creation of character," and his prose style, which became a model of clarity and vividness.

THE WORKS OF THE ORATORS

As soon as speeches began to be written down, they could be preserved. We know little about the conditions of book "publication" (i.e., making copies for distribution) in the fourth century, but there was an active market for books in Athens, and some of the speeches may have achieved wide circulation.[12] An orator (or his family) may have preserved his own speeches, perhaps to advertise his ability or demonstrate his success, or booksellers may have collected and copied them in order to make money.

We do not know how closely the preserved text of these speeches corresponded to the version actually delivered in court or in the Assembly. Speakers undoubtedly extemporized or varied from their text on occasion, but there is no good evidence that deliberative speeches were substantially revised for publication.[13] In forensic oratory a logographer's reputation would derive first and

[12]Dover's discussion (1968) of the preservation and transmission of the works of Lysias (and perhaps others under his name) is useful not just for Lysias but for the other orators too. His theory of shared authorship between logographer and litigant, however, is unconvincing (see Usher 1976).

[13]See further Trevett 1996: 437–439.

foremost from his success with jurors. If a forensic speech was victorious, there would be no reason to alter it for publication, and if it lost, alteration would probably not deceive potential clients. Thus, the published texts of forensic speeches were probably quite faithful to the texts that were provided to clients, and we have little reason to suspect substantial alteration in the century or so before they were collected by scholars in Alexandria (see below).

In addition to the speaker's text, most forensic speeches have breaks for the inclusion of documents. The logographer inserted a notation in his text—such as *nomos* ("law") or *martyria* ("testimony")—and the speaker would pause while the clerk read out the text of a law or the testimony of witnesses. Many speeches survive with only a notation that a *nomos* or *martyria* was read at that point, but in some cases the text of the document is included. It used to be thought that these documents were all creations of later scholars, but many (though not all) are now accepted as genuine.[14]

With the foundation of the famous library in Alexandria early in the third century, scholars began to collect and catalogue texts of the orators, along with many other classical authors. Only the best orators were preserved in the library, many of them represented by over 100 speeches each (some undoubtedly spurious). Only some of these works survived in manuscript form to the modern era; more recently a few others have been discovered on ancient sheets of papyrus, so that today the corpus of Attic Oratory consists of about 150 speeches, together with a few letters and other works. The subject matter ranges from important public issues and serious crimes to business affairs, lovers' quarrels, inheritance disputes, and other personal or family matters.

In the centuries after these works were collected, ancient scholars gathered biographical facts about their authors, produced grammatical and lexicographic notes, and used some of the speeches as evidence for Athenian political history. But the ancient scholars who were most interested in the orators were those who studied prose style, the most notable of these being Diony-

[14] See MacDowell 1990: 43–47; Todd 1993: 44–45.

sius of Halicarnassus (first century BC), who wrote treatises on several of the orators,[15] and Hermogenes of Tarsus (second century AD), who wrote several literary studies, including *On Types of Style*.[16] But relative to epic or tragedy, oratory was little studied; and even scholars of rhetoric whose interests were broader than style, like Cicero and Quintilian, paid little attention to the orators, except for the acknowledged master, Demosthenes.

Most modern scholars until the second half of the twentieth century continued to treat the orators primarily as prose stylists.[17] The reevaluation of Athenian democracy by George Grote and others in the nineteenth century stimulated renewed interest in Greek oratory among historians; and increasing interest in Athenian law during that century led a few legal scholars to read the orators. But in comparison with the interest shown in the other literary genres—epic, lyric, tragedy, comedy, and even history—Attic oratory has been relatively neglected until the last third of the twentieth century. More recently, however, scholars have discovered the value of the orators for the broader study of Athenian culture and society. Since Dover's ground-breaking works on popular morality and homosexuality,[18] interest in the orators has been increasing rapidly, and they are now seen as primary representatives of Athenian moral and social values, and as evidence for social and economic conditions, political and social ide-

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[15]Dionysius' literary studies are collected and translated in Usher 1974–1985.

[16]Wooten 1987. Stylistic considerations probably also influenced the selection of the "canon" of ten orators; see Worthington 1994.

[17]For example, the most popular and influential book ever written on the orators, Jebb's *The Attic Orators* (1875), was presented as an "attempt to aid in giving Attic Oratory its due place in the history of Attic Prose" (I.xiii). This modern focus on prose style can plausibly be connected to the large role played by prose composition (the translation of English prose into Greek, usually in imitation of specific authors or styles) in the Classics curriculum, especially in Britain.

[18]Dover (1974, 1978). Dover recently commented (1994: 157), "When I began to mine the riches of Attic forensic oratory I was astonished to discover that the mine had never been exploited."

ology, and in general those aspects of Athenian culture that in the past were commonly ignored by historians of ancient Greece but are of increasing interest and importance today, including women and the family, slavery, and the economy.

GOVERNMENT AND LAW IN CLASSICAL ATHENS

The hallmark of the Athenian political and legal systems was its amateurism. Most public officials, including those who supervised the courts, were selected by lot and held office for a limited period, typically a year. Thus a great many citizens held public office at some point in their lives, but almost none served for an extended period of time or developed the experience or expertise that would make them professionals. All significant policy decisions were debated and voted on in the Assembly, where the quorum was 6,000 citizens, and all significant legal cases were judged by bodies of 200 to 500 jurors or more. Public prominence was not achieved by election (or selection) to public office but depended rather on a man's ability to sway the majority of citizens in the Assembly or jurors in court to vote in favor of a proposed course of action or for one of the litigants in a trial. Success was never permanent, and a victory on one policy issue or a verdict in one case could be quickly reversed in another.[19] In such a system the value of public oratory is obvious, and in the fourth century, oratory became the most important cultural institution in Athens, replacing drama as the forum where major ideological concerns were displayed and debated.

Several recent books give good detailed accounts of Athenian government and law,[20] and so a brief sketch can suffice here. The

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[19]In the Assembly this could be accomplished by a reconsideration of the question, as in the famous Mytilenean debate (Thuc. 3.36–50); in court a verdict was final, but its practical effects could be thwarted or reversed by later litigation on a related issue.

[20]For government, see Sinclair 1988, Hansen 1991; for law, MacDowell 1978, Todd 1993, and Boegehold 1995 (Bonner 1927 is still helpful). Much of our information about the legal and political systems comes from a work attributed to Aristotle but perhaps written by a pupil of his, *The Athenian*

main policy-making body was the Assembly, open to all adult male citizens; a small payment for attendance enabled at least some of the poor to attend along with the leisured rich. In addition, a Council of 500 citizens, selected each year by lot with no one allowed to serve more than two years, prepared material for and made recommendations to the Assembly; a rotating subgroup of this Council served as an executive committee, the Prytaneis. Finally, numerous officials, most of them selected by lot for one-year terms, supervised different areas of administration and finance. The most important of these were the nine Archons (lit. "rulers"): the eponymous Archon after whom the year was named, the Basileus ("king"),[21] the Polemarch, and the six Thesmothetae. Councilors and almost all these officials underwent a preliminary examination (*dokimasia*) before taking office, and officials submitted to a final accounting (*euthynai*) upon leaving; at these times any citizen who wished could challenge a person's fitness for his new position or his performance in his recent position.

There was no general taxation of Athenian citizens. Sources of public funding included the annual tax levied on metics, various fees and import duties, and (in the fifth century) tribute from allied cities; but the source that figures most prominently in the orators is the Athenian system of liturgies (*leitourgiai*), by which in a regular rotation the rich provided funding for certain special public needs. The main liturgies were the *chorēgia*, in which a sponsor (*chorēgos*) supervised and paid for the training and performance of a chorus which sang and danced at a public festival,[22] and the trierarchy, in which a sponsor (trierarch) paid to equip and usually commanded a trireme, or warship, for a year. Some of these liturgies required substantial expenditures, but even so, some men

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Constitution (*Ath. Pol.*—conveniently translated with notes by Rhodes 1984). The discovery of this work on a papyrus in Egypt in 1890 caused a major resurgence of interest in Athenian government.

[21] Modern scholars often use the term *archōn basileus* or "king archon," but Athenian sources (e.g., *Ath. Pol.* 57) simply call him the *basileus*.

[22] These included the productions of tragedy and comedy, for which the main expense was for the chorus.

spent far more than required in order to promote themselves and their public careers, and litigants often tried to impress the jurors by referring to liturgies they had undertaken (see, e.g., Lys. 21.1–n5). A further twist on this system was that if a man thought he had been assigned a liturgy that should have gone to someone else who was richer than he, he could propose an exchange of property (*antidosis*), giving the other man a choice of either taking over the liturgy or exchanging property with him. Finally, the rich were also subject to special taxes (*eisphorai*) levied as a percentage of their property in times of need.

The Athenian legal system remained similarly resistant to professionalization. Trials and the procedures leading up to them were supervised by officials, primarily the nine Archons, but their role was purely administrative, and they were in no way equivalent to modern judges. All significant questions about what we would call points of law were presented to the jurors, who considered them together with all other issues when they delivered their verdict at the end of the trial.[23] Trials were "contests" (*agōnes*) between two litigants, each of whom presented his own case to the jurors in a speech, plaintiff first, then defendant; in some cases each party then spoke again, probably in rebuttal. Since a litigant had only one or two speeches in which to present his entire case, and no issue was decided separately by a judge, all the necessary factual information and every important argument on substance or procedure, fact or law, had to be presented together. A single speech might thus combine narrative, argument, emotional appeal, and various digressions, all with the goal of obtaining a favorable verdict. Even more than today, a litigant's primary task was to control the issue—to determine which issues the jurors would consider most important and which questions they would have in their minds as they cast their votes. We only

[23]Certain religious "interpreters" (*exēgētai*) were occasionally asked to give their opinion on a legal matter that had a religious dimension (such as the prosecution of a homicide), but although these opinions could be reported in court (e.g., Dem. 47.68–73), they had no official legal standing. The most significant administrative decision we hear of is the refusal of the Basileus to accept the case in Antiphon 6 (see 6.37–46).

rarely have both speeches from a trial,[24] and we usually have little or no external evidence for the facts of a case or the verdict. We must thus infer both the facts and the opponent's strategy from the speech we have, and any assessment of the overall effectiveness of a speech and of the logographer's strategy is to some extent speculative.

Before a trial there were usually several preliminary hearings for presenting evidence; arbitration, public and private, was available and sometimes required. These hearings and arbitration sessions allowed each side to become familiar with the other side's case, so that discussions of "what my opponent will say" could be included in one's speech. Normally a litigant presented his own case, but he was often assisted by family or friends. If he wished (and could afford it), he could enlist the services of a logographer, who presumably gave strategic advice in addition to writing a speech. The speeches were timed to ensure an equal hearing for both sides,[25] and all trials were completed within a day. Two hundred or more jurors decided each case in the popular courts, which met in the Agora.[26] Homicide cases and certain other religious trials (e.g., Lys. 7) were heard by the Council of the Areopagus or an associated group of fifty-one Ephetae. The Areopagus was composed of all former Archons—perhaps 150–200 members at most times. It met on a hill called the Areopagus ("rock of Ares") near the Acropolis.

Jurors for the regular courts were selected by lot from those citizens who registered each year and who appeared for duty that day; as with the Assembly, a small payment allowed the poor to serve. After the speakers had finished, the jurors voted immediately without any formal discussion. The side with the majority won; a tie vote decided the case for the defendant. In some cases where the penalty was not fixed, after a conviction the ju-

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[24]The exceptions are Demosthenes 19 and Aeschines 2, Aeschines 3 and Demosthenes 18, and Lysias 6 (one of several prosecution speeches) and Andocides 1; all were written for major public cases.

[25]Timing was done by means of a water clock, which in most cases was stopped during the reading of documents.

[26]See Boegehold 1995.

rors voted again on the penalty, choosing between penalties proposed by each side. Even when we know the verdict, we cannot know which of the speaker's arguments contributed most to his success or failure. However, a logographer could probably learn from jurors which points had or had not been successful, so that arguments that are found repeatedly in speeches probably were known to be effective in most cases.

The first written laws in Athens were enacted by Draco (ca. 620) and Solon (ca. 590), and new laws were regularly added. At the end of the fifth century the existing laws were reorganized, and a new procedure for enacting laws was instituted; thereafter a group of Law-Givers (*nomothetai*) had to certify that a proposed law did not conflict with any existing laws. There was no attempt, however, to organize legislation systematically, and although Plato, Aristotle, and other philosophers wrote various works on law and law-giving, these were either theoretical or descriptive and had no apparent influence on legislation. Written statutes generally used ordinary language rather than precise legal definitions in designating offenses, and questions concerning precisely what constituted a specific offense or what was the correct interpretation of a written statute were decided (together with other issues) by the jurors in each case. A litigant might, of course, assert a certain definition or interpretation as "something you all know" or "what the lawgiver intended," but such remarks are evidently tendentious and cannot be taken as authoritative.

The result of these procedural and substantive features was that the verdict depended largely on each litigant's speech (or speeches). As one speaker puts it (Ant. 6.18), "When there are no witnesses, you (jurors) are forced to reach a verdict about the case on the basis of the prosecutor's and defendant's words alone; you must be suspicious and examine their accounts in detail, and your vote will necessarily be cast on the basis of likelihood rather than clear knowledge." Even the testimony of witnesses (usually on both sides) is rarely decisive. On the other hand, most speakers make a considerable effort to establish facts and provide legitimate arguments in conformity with established law. Plato's view of rhetoric as a clever technique for persuading an ignorant crowd that the false is true is not borne out by the speeches, and the le-

gal system does not appear to have produced many arbitrary or clearly unjust results.

The main form of legal procedure was a *dikē* ("suit") in which the injured party (or his relatives in a case of homicide) brought suit against the offender. Suits for injuries to slaves would be brought by the slave's master, and injuries to women would be prosecuted by a male relative. Strictly speaking, a *dikē* was a private matter between individuals, though like all cases, *dikai* often had public dimensions. The other major form of procedure was a *graphē* ("writing" or "indictment") in which "anyone who wished" (i.e., any citizen) could bring a prosecution for wrongdoing. *Graphai* were instituted by Solon, probably in order to allow prosecution of offenses where the victim was unable or unlikely to bring suit himself, such as selling a dependent into slavery; but the number of areas covered by *graphai* increased to cover many types of public offenses as well as some apparently private crimes, such as *hybris*.

The system of prosecution by "anyone who wished" also extended to several other more specialized forms of prosecution, like *eisangelia* ("impeachment"), used in cases of treason. Another specialized prosecution was *apagōgē* ("summary arrest"), in which someone could arrest a common criminal (*kakourgos*, lit. "evildoer"), or have him arrested, on the spot. The reliance on private initiative meant that Athenians never developed a system of public prosecution; rather, they presumed that everyone would keep an eye on the behavior of his political enemies and bring suit as soon as he suspected a crime, both to harm his opponents and to advance his own career. In this way all public officials would be watched by someone. There was no disgrace in admitting that a prosecution was motivated by private enmity.

By the end of the fifth century the system of prosecution by "anyone who wished" was apparently being abused by so-called sykophants (*sykophantai*), who allegedly brought or threatened to bring false suits against rich men, either to gain part of the fine that would be levied or to induce an out-of-court settlement in which the accused would pay to have the matter dropped. We cannot gauge the true extent of this problem, since speakers usually provide little evidence to support their claims that their oppo-

nents are sykophants, but the Athenians did make sykophancy a crime. They also specified that in many public procedures a plaintiff who either dropped the case or failed to obtain one-fifth of the votes would have to pay a heavy fine of 1,000 drachmas. Despite this, it appears that litigation was common in Athens and was seen by some as excessive.

Over the course of time, the Athenian legal and political systems have more often been judged negatively than positively. Philosophers and political theorists have generally followed the lead of Plato (427–347), who lived and worked in Athens his entire life while severely criticizing its system of government as well as many other aspects of its culture. For Plato, democracy amounted to the tyranny of the masses over the educated elite and was destined to collapse from its own instability. The legal system was capricious and depended entirely on the rhetorical ability of litigants with no regard for truth or justice. These criticisms have often been echoed by modern scholars, who particularly complain that law was much too closely interwoven with politics and did not have the autonomous status it achieved in Roman law and continues to have, at least in theory, in modern legal systems.

Plato's judgments are valid if one accepts the underlying presuppositions, that the aim of law is absolute truth and abstract justice and that achieving the highest good of the state requires thorough and systematic organization. Most Athenians do not seem to have subscribed to either the criticisms or the presuppositions, and most scholars now accept the long-ignored fact that despite major external disruptions in the form of wars and two short-lived coups brought about by one of these wars, the Athenian legal and political systems remained remarkably stable for almost two hundred years (508–320). Moreover, like all other Greek cities at the time, whatever their form of government, Athenian democracy was brought to an end not by internal forces but by the external power of Philip of Macedon and his son Alexander. The legal system never became autonomous, and the rich sometimes complained that they were victims of unscrupulous litigants, but there is no indication that the people wanted to yield control of the legal process to a professional class, as Plato recommended. For most Athenians—Plato being an exception in this and many

other matters—one purpose of the legal system was to give everyone the opportunity to have his case heard by other citizens and have it heard quickly and cheaply; and in this it clearly succeeded.

Indeed, the Athenian legal system also served the interests of the rich, even the very rich, as well as the common people, in that it provided a forum for the competition that since Homer had been an important part of aristocratic life. In this competition, the rich used the courts as battlegrounds, though their main weapon was the rhetoric of popular ideology, which hailed the rule of law and promoted the ideal of moderation and restraint.[27] But those who aspired to political leadership and the honor and status that accompanied it repeatedly entered the legal arena, bringing suit against their political enemies whenever possible and defending themselves against suits brought by others whenever necessary. The ultimate judges of these public competitions were the common people, who seem to have relished the dramatic clash of individuals and ideologies. In this respect fourth-century oratory was the cultural heir of fifth-century drama and was similarly appreciated by the citizens. Despite the disapproval of intellectuals like Plato, most Athenians legitimately considered their legal system a hallmark of their democracy and a vital presence in their culture.

THE TRANSLATION OF GREEK ORATORY

The purpose of this series is to provide students and scholars in all fields with accurate, readable translations of all surviving classical Attic oratory, including speeches whose authenticity is disputed, as well as the substantial surviving fragments. In keeping with the originals, the language is for the most part nontechnical. Names of persons and places are given in the (generally more familiar) Latinized forms, and names of officials or legal procedures have been translated into English equivalents, where possible. Notes are intended to provide the necessary historical and cultural background; scholarly controversies are generally not dis-

[27] Ober 1989 is fundamental; see also Cohen 1995.

cussed. The notes and introductions refer to scholarly treatments in addition to those listed below, which the reader may consult for further information.

Cross-references to other speeches follow the standard numbering system, which is now well established except in the case of Hyperides (for whom the numbering of the Oxford Classical Text is used).[28] References are by work and section (e.g., Dem. 24.73); spurious works are not specially marked; when no author is named (e.g., 24.73), the reference is to the same author as the annotated passage.

ABBREVIATIONS

Aes. = Aeschines
And. = Andocides
Ant. = Antiphon
Arist. = Aristotle
Aristoph. = Aristophanes
Ath. Pol. = *The Athenian Constitution*
Dem. = Demosthenes
Din. = Dinarchus
Herod. = Herodotus
Hyp. = Hyperides
Is. = Isaeus
Isoc. = Isocrates
Lyc. = Lycurgus
Lys. = Lysias
Plut. = Plutarch
Thuc. = Thucydides
Xen. = Xenophon

NOTE ON CURRENCY: The main unit of Athenian currency was the drachma; this was divided into obols and larger amounts were designated minas and talents.

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[28] For a listing of all the orators and their works, with classifications (forensic, deliberative, epideictic) and rough dates, see Edwards 1994: 74–79.

1 drachma = 6 obols
1 mina = 100 drachmas
1 talent = 60 minas (6,000 drachmas)

It is impossible to give an accurate equivalence in terms of modern currency, but it may be helpful to remember that the daily wage of some skilled workers was a drachma in the mid-fifth century and 2–2½ drachmas in the later fourth century. Thus it may not be too misleading to think of a drachma as worth about $50 or £33 and a talent as about $300,000 or £200,000 in 1997 currency.

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INTRODUCTION TO DEMOSTHENES

By Michael Gagarin

Since antiquity Demosthenes (384–322 BC) has usually been judged the greatest of the Attic orators. Although the patriotic and nationalistic tenor of his message has been more highly regarded in some periods of history than in others, he is unique in his mastery of so many different rhetorical styles and his ability to blend them into a powerful ensemble.

LIFE

Demosthenes was born into an old wealthy Athenian family. His father Demosthenes owned workshops that made swords and furniture. His maternal grandfather, Gylon, had been exiled from Athens and lived in the Crimea, where his mother Cleobule was born (perhaps to a Scythian mother). When Demosthenes was seven, his father died leaving his estate in the trust of several guardians. According to Demosthenes' own account, the guardians mismanaged and defrauded the estate to the point that when he turned eighteen, the age of majority, he received almost nothing. He devoted the next several years to recovering his property, first studying forensic pleading and then bringing a series of suits against the guardians to recover his patrimony (speeches 27–31). He won the first case (27, *Against Aphobus I*), but then had to bring several more suits in order to collect the amount awarded him by the court. In the course of these trials he gained a reputation as a successful speaker, became sought after by others, and began to write speeches for a wide range of private suits, including inheritance, shipping loans, assault, and trespass. His clients included one of the richest men in Athens, the banker Phormio;

the speech *For Phormio* (36) involves a dispute over twenty talents (equivalent to several million dollars today). Demosthenes' vivid characterization of the honest, hard-working Phormio and his malicious and extravagant opponent proved so convincing that the jurors reportedly refused to listen to the other side and took the highly unusual step of voting immediately for Phormio.

In 355 Demosthenes became involved in his first major public case (22, *Against Androtion*). By this time it was common for ambitious or influential citizens to bring legal charges against their political opponents on matters of public interest. Charges of proposing an illegal decree (the *graphē paranomōn*) were particularly common; these involved the indictment of the proposer of a decree on the ground that it conflicted with existing law.[1] Although these speeches addressed the specific issue of a conflict between laws, it was generally accepted that the merits of the decree, and of its proposer, were also relevant factors, and these cases formed a major arena for the ongoing political struggles between leading figures in the city.

About the same time Demosthenes also began to publish speeches on public issues which he delivered in the assembly, and after 350, although he continued from time to time to write speeches for private disputes, he turned his attention primarily to public policy, especially relations between Athens and the growing power of Macedon under King Philip. Demosthenes' strategy throughout was to increase Athens' military readiness, to oppose Philip's expansion and to support other Greek cities in their resistance to it. Most notable in support of these objectives were the three *Olynthiacs* (1–3) in 349 unsuccessfully urging support for the city of Olynthus (which soon afterwards fell to Philip) and the four *Philippics* (4, 6, 9, 10) in 351–341 urging greater opposition to Philip. But Philip continued to extend his power into Greece, and in 338 he defeated a combined Greek force (including Athens)

[1]One might compare the U.S. procedure of challenging the constitutionality of a law in court. Differences include the fact that today no charge is brought against the proposer of the law and that the case is heard by a small panel of professional judges, not the hundreds of untrained jurors who would have heard the case in Athens.

at the battle of Chaeronea in Boeotia, north of Attica. This battle is usually taken to mark the end of the Greek cities' struggle to remain independent.

After Chaeronea Demosthenes continued to urge resistance to Philip, but his efforts were largely ineffectual and his successes and failures are more a matter of internal Athenian politics. His most prominent opponent during this period was Aeschines, who had been acquitted earlier (343) when Demosthenes brought a suit against him in connection with a delegation to Philip on which both men had served (19, cf. Aeschines 2). After Chaeronea, when a minor ally of Demosthenes named Ctesiphon proposed a decree awarding a crown to Demosthenes in recognition of his service to the city, Aeschines brought a *graphē paranomōn* against Ctesiphon (Aeschines 3). The suit, which was not tried until 330, raised legal objections to the proposed decree but also attacked the person and career of Demosthenes at considerable length. Demosthenes responded with his most famous speech *On the Crown* (18), often known by its Latin name *De Corona*. The verdict was so one-sided that Aeschines was fined for not receiving one-fifth of the votes and went into exile. This was Demosthenes' greatest triumph. The last years of his life, however, resulted in notable defeats, first in the rather shadowy Harpalus affair (324–323), from which no speech of his survives (but see Dinarchus 1). Shortly afterwards he was condemned to death at the instigation of pro-Macedonian forces and committed suicide.

WORKS

Sixty-one speeches and some miscellaneous works, including a collection of letters, have come down to us under Demosthenes' name. The authenticity of many of these has been challenged, often because of the allegedly poor quality of the work; but this reason is less often accepted today, and most of the public speeches and many of the private speeches are now thought to be authentic. Among the main exceptions are a group of private speeches (45, 46, 49, 50, 52, 53, 59 and possibly 47 and 51) that were delivered by Apollodorus and are now commonly thought to have been composed by him (Trevett 1992).

Apart from a funeral oration (60) and collections of proems and letters, Demosthenes' works fall into two groups, the assembly speeches (1–17) and the court speeches (18–59); the latter can be further divided into public and private speeches, though these are not formal legal categories. Notable among the public forensic speeches are *Against Meidias* (21), which has recently drawn attention for its pronouncements on Athenian public values, and his last surviving speech, *On the Crown* (18), generally recognized as his masterpiece. In this speech he uses his entire repertory of rhetorical strategies to defend his life and political career. He treats the legal issues of the case briefly, as being of minor concern, and then defends his conduct during the past three decades of Athenian history, arguing that even when his policy did not succeed, on each occasion it was the best policy for the city, in contrast to Aeschines' policies, which, when he ventured to propose any, were disastrous. Demosthenes' extensive personal attack on Aeschines' life and family may be too harsh for modern taste, but the blending of facts, innuendoes, sarcasm, rhetorical questions, and other devices is undeniably effective.

Demosthenes' private speeches have recently begun to attract more interest from scholars, who draw from them insight into Athenian social, political, and economic life. Only the speeches concerned with recovering his inheritance (27–31) were delivered by Demosthenes himself; the rest were written for delivery by other litigants. We have already noted *For Phormio*, which is one of several having to do with banking. *Against Conon* (54) alleges an assault by several young rowdies spurred on by their father, and *Against Neaera* (59), delivered and probably written by Apollodorus, recounts the life of a former slave woman and her affairs with different Athenian men.

STYLE

Demosthenes is a master of Greek prose style; he paid careful attention to style, and to the oral delivery of his speeches. His Roman counterpart, Cicero, modeled his oratorical style (and some other features of his work) in part on Demosthenes' Greek. Although Demosthenes' style varied considerably over the course of

time and among the different types of speeches, later assessments of his style are based primarily on the public forensic speeches, and especially the last of these, *On the Crown*. Long and sometimes elaborate sentences are one feature of his style, but Demosthenes' true greatness is his ability to write in many styles and to vary his style, mixing different features together both to suit the topic and to give variety and vigor to his speeches. The final product required great skill and practice to deliver effectively, and the stories about Demosthenes' rigorous training in delivery (see in general Plutarch, *Life of Demosthenes* 6–7), even if not literally true, accurately reflect his priorities. Indeed, only by reading aloud sections of *On the Crown* in Greek can one truly appreciate the power and authority of his prose.

SIGNIFICANCE

Demosthenes played a vital role in Athenian public affairs for some thirty years. His advocacy of the vigilant defense of Greece against foreign invaders, though ultimately unsuccessful in preserving Greek freedom, inspired his fellow Athenians with patriotic loyalty, and has similarly inspired many others in later times. In recent times political rhetoric has not been so widely admired as in the past, and Demosthenes is less read today than he used to be. But he still represents the greatest achievement of Greek oratory and stands as one of the greatest orators of any age.

INTRODUCTION TO THIS VOLUME

By Adele C. Scafuro

THE RANGE OF SPEECHES, AUTHORSHIP, AND THE AUTHENTICITY OF INSERTED DOCUMENTS

Nine of the eleven speeches in this volume concern inheriting an estate, or recovering debts owed to an estate, or exchanging someone else's estate for one's own. One of the remaining two speeches (Dem. 39) belongs to a trial that emerged in the course of an inheritance dispute, when one party delayed a lawsuit against his half-brother in order to sue him to stop using the same name as his. The other odd (non-estate) speech (Dem. 47) belongs to a trial that originated in a request to return naval gear: a fight broke out between two men, each sued the other for assault, and the worthy fellow who was found guilty in the first case is now suing the witnesses of the other for giving false testimony in his trial. Few of the speeches can be precisely dated; most seem to belong to trials in the 340s. Oration 41 has no dating indication at all but may have been written early in Demosthenes' career as a logographer[1] (late 360s?) and so may be the earliest speech in this volume; the latest is 42, possibly composed ca. 330 BC, and certainly not by Demosthenes.[2]

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[1]A "logographer" is a professional "writer of speeches" for litigants to deliver in court; the occupation could be lucrative but was not highly respected in Athens. For Demosthenes' early logographic career, see Gagarin's "Introduction to Demosthenes."

[2]Dates for the speeches are briefly discussed in the individual introductions or notes. Gernet 1957: 94 suggests the early 360s as the date for

Diversity amidst similarity of incident in the "estate cases" is remarkable. The plaintiffs in 40 and 41 are seeking to obtain money owed them: one plaintiff is after the dowry owed his mother, while the other, the remainder of the dowry owed his wife; both seek the money from a kinsman (the one from his half-brother, the other from his brother-in-law), and both are anxious to win their cases before the estates of recently deceased parents are divided among the heirs. In 42, the speaker, a member of the highest tax bracket, has been assigned the duty of equipping a trireme for naval service but claims he lacks the means to do that. By an institutionalized, legitimate, and (to us) bizarre process (*antidosis*), he challenges Phaenippus to carry out the task instead of himself and if not, to exchange properties. Phaenippus has refused and now the Generals are presiding over an adjudication that will determine which of the two men has the better claim (the more valuable estate) for carrying out the trierarchic service.

The advocate (*synēgoros*)[3] in 43 makes a plea in an adjudication of an estate (*diadikasia*) for his natural-born son to win the inheritance of a kinsman named Hagnias who died at least thirty years earlier; he has had the boy adopted to his long-dead grandfather Eubulides (another bizarre but legitimate process), and the adoption has made the boy a closer kinsman to Hagnias than either the former or current possessor of the estate. The advocate in 44 makes a plea in behalf of his elderly father against their kinsman Leochares on a charge of false witnessing in a trial emerging from a dispute over the estate of Archiades who also died decades earlier; Leochares, he maintains, lied when he claimed he was Archiades' legitimate son via a posthumous adoption: Leochares' grandfather, father, and brother had each successively been

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Dem. 43, which would make it one of the earliest private lawsuits in the collection.

[3]A *synēgoros* is a speaker who addresses the court on behalf of a plaintiff or defendant who is legally incompetent (e.g., a woman or a minor) or otherwise unfit (because he is old or unskilled in Greek); *synēgoroi* might also address the court in addition to the main pleader as part of a prosecutorial or defense team. See Rubinstein 2000: 33–34.

adopted to the same dead Archiades; now that Leochares' brother has died while in possession of the estate, the family's manipulative monopoly on adoptions must end, and the court should award the estate to the nearest kinsman, the speaker's father.

Speeches 45 and 46 are a pair, the first and second speeches delivered by Apollodorus in a trial against his kinsman Stephanus on a charge of giving false testimony in 350/49 BC. The trial emerged from an earlier case initiated by Apollodorus against his father's former bank manager Phormion in an attempt to recover debts owed to his father's estate; that case never made it to court, but the hearing that barred its entrance—the one in which Stephanus allegedly gave his false testimony—did (36). The first-class scoundrel who is the speaker of 48 sues his brother-in-law Olympiodorus for damages. He alleges that he breached an agreement by which they were each to make a separate claim upon the estate of a kinsman who died rich and childless; whoever of the two won the estate was to share it with the other; Olympiodorus won but did not share. In 49, Apollodorus sues Timotheus son of the famous General Conon, probably ca. 362 BC, to recover a number of loans that Apollodorus' father had made to him during the years 374–372.[4]

It is likely that Demosthenes himself wrote only three of the speeches (39, 41, and 45). Many scholars have wanted to wrest 45 from him, on the grounds that the logographer who had written *For Phormion* (36) and had so brilliantly and mercilessly attacked Apollodorus there would not have turned around a couple of weeks later to assist him by writing the brilliant attack on Phomion's witness Stephanus (45). Apollodorus probably delivered both speeches (45 and 46) but wrote only the second.[5] Apollodorus is also the author of *Against Timotheus* (written at least a dozen years earlier than 45 and 46) in which he brings suit to recover the loans mentioned above. Four other speeches in the Demosthenic corpus are ascribed to Apollodorus (50, 52, 53, and

[4]The date of the speech is controversial; see the Introduction to Dem. 49.

[5]See the Introductions to Dem. 45 and 46.

59), all from trials initiated or pleaded by him. Many scholars think that Apollodorus additionally composed 47 (*Against Evergus and Mnesibulus on a charge of giving false testimony*); if that is so, then that speech is our only example of Apollodorus' activity as a logographer.[6]

The remaining "non-Demosthenic" speeches in this volume (40, 42, 43, 44, and 48) have no identifiable author but nonetheless appear to be authentic products of fourth-century speechwriters and not of later rhetoricians creating exercises for their students. Orations 43 and 48 share stylistic similarities that have led some scholars to ascribe them to the same (unknown) author. Expert critics of the nineteenth and twentieth centuries used mainly subjective grounds to deny Demosthenes' authorship: inferior argumentation and style (including the frequency of hiatus[7] and tribrachs[8]) are not worthy, so they claim, of our author. Contemporary critics are generally less ready to be so avowedly subjective; after all, changes of style may be adaptations for particular clients. Readers must develop their own expertise and opinions. The translator shares many of the prejudices of the nineteenth-century German scholar Friedrich Blass and has sown them freely in the introductory essays: that speeches in which the argumentation is lifeless and not lucid but void of legal finesse and repetitive and naïve, in which material is adduced without relevance and order, and in which sentences run on without articulate direction—such compositions cannot have been Demosthenes'.

The order of the speeches in modern editions follows in the main the order that appears in the one medieval manuscript that preserves all sixty-one speeches (**F**). It would seem that whoever

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[6]See Trevett 1992: 50–76 for discussion of stylistic features of the "Apollodoran speeches" and arguments for and against Apollodoran authorship, with ample citation of earlier bibliography.

[7]Hiatus occurs when a word ending in a vowel is followed by a word beginning with a vowel. In Dilts' new edition of Demosthenes' speeches, many more instances of hiatus have been allowed into the text on the basis of evidence from two major manuscripts (**S** and **A**); for explanation, see Dilts 2008: viii–ix and 2010: vii.

[8]A tribach is a run of three short syllables in a row.

first made a collective edition of Demosthenes in antiquity (perhaps during the Hellenistic Age in the Library of Alexandria)[9] arranged the speeches not only on the basis of content (as the collocation of "estate cases" suggests) but also on the basis of the perceived remedy (not necessarily perceived correctly) by which the case was brought to court. Among the eleven speeches in this volume, Orations 40 and 41, while concerning the recovery of dowries, may have been brought to court not by an "action for dowry" (as the ancient titles to the speeches suggest) but by some other remedy (see the Introduction to those speeches). Orations 43 and 44 both have much to do with posthumous adoptions in claiming an estate, but 43 comes to court as an adjudication of the estate and 44 comes as an action for false testimony, which, if successful, is likely to be followed by an adjudication. Orations 45 and 46 belong to the same trial, an action for false testimony; the impugned testimony concerns a challenge from one party to the other regarding the identification of a document as the will of Apollodorus' father. Oration 47 is likewise an action for false testimony, and the impugned testimony once again concerns a challenge, this time regarding the production of a slave to provide information under torture.

Among the three principal medieval manuscripts that contain these particular speeches (39–49), one of them (**S**) puts Speech 36 immediately before Speeches 45 and 46.[10] The arrangement is perfectly comprehensible: the testimony presented in 36 became the subject of dispute at the subsequent trial for which 45 and 46 were composed and delivered. In the arrangement of the two other me-

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[9]The hypothesis of an Alexandrian edition is made, e.g., by Drerup 1899: 542–551.

[10]The three medieval manuscripts are Parisinus 2934 (**S**) with sixty orations (including Speech 17, partially preserved); Marcianus Z 416 (**F**) with sixty-one orations; and Marcianus 418 (**Q**), closely related to **F**, with thirty-two orations (18–19, 32–61). Other important manuscripts survive (Augustanus 485 [**A**] is extremely important, with fifty-four speeches, lacking 45, 46, and part of 40), but here only those preserving Dem. 39–49 are of concern. For a description of the primary manuscripts in English, see the preface in Dilts 2002.

dieval manuscripts (**F** and **Q**) with these speeches, however, 36 is grouped with 32–38, all speeches belonging to cases that fall under *paragraphē*, a legal procedure for objecting that a case is not admissible in court; and 45 and 46 are followed by 47, all speeches belonging to trials for false witnessing. Procedure, then, became a major ordering principle early on, vying with content.

Documents (usually witness testimonies and laws, but also challenges, contracts, and oracles, among others) associated with the presentation of the case in court are often cited in the course of an oration: a speaker now and again will round off one bit of narrative and address the judges and then the secretary, "That you may know I'm telling the truth, please read the testimony of So-and-So"; or he might pause after depicting his own or his opponent's conduct and bid the secretary (as he does at 43.16), "Now please read the law, according to which there is to be a summons of the individual who is in possession of the estate." Following such requests, our modern texts in most cases print only the word "Depositions" or "Law," and the speech immediately resumes—without having printed the contents of the testimony or law because those documents have not survived. Some of the medieval manuscripts, however, do preserve documents for a small number of speeches. Three in this volume have court documents intact: 43, 45, and 46. Experts who have studied the manuscripts do not believe that the documents were copied into the texts when they first circulated in Athens but may have been added later, perhaps by Hellenistic scholars who found the laws (or decrees or oracles) in collections in the Library of Alexandria or perhaps (e.g., in the case of witness testimonies), in separate dossiers attached to the end of the speeches; possibly some (or many) documents were forged by later rhetoricians, either to display their cleverness or to give greater enjoyment to their students.[11] In any case, the authenticity of preserved documents is always questionable and must be assessed on an individual basis. In 43, 45, and 46, aside from numerous witness depositions and an occasional challenge, lease, will, and oracle, nineteen laws have been inserted. On each

[11] See MacDowell 1990: 43–47 for discussion and earlier bibliography.

occasion, I have offered, usually in the footnotes, brief arguments for their authenticity (usually based on their language and corroboration from other sources) or fraudulence. Some of the inserted laws cover important topics, for example, a portion of "Dracon's homicide law" (cited at 43.57) for which we possess an extant inscribed version;[12] a law of intestate succession (cited at 43.51 and discussed in V below); and a "Solonian law on adoption" (or "on wills"), perhaps the most difficult of all (cited at 46.14).

As the rhetoricians of antiquity recognized, the best way to understand a case is by identifying the procedure or remedy by which it came to court. The rhetoricians were teachers, and the ancient speeches served as models for newer generations of advocates and scholars. In the introductions to each of the speeches, I give a brief discussion of the remedy and dispute. For 43, 44, and 45, I have written lengthier essays; these are difficult speeches, and I have tried to raise interesting questions and in some cases to offer quite provocative solutions. Since so many of the speeches concern inheritance and other family and civic institutions, I have included here in the "Introduction to This Volume" a discussion of the most important topics: I. Marriage, legitimacy, and natural children; II. Adoption; III. Paternal acknowledgment and introduction to phratry and deme; IV. Claiming an estate; and V. The law of intestate succession. In the introductions and notes to the individual speeches, I frequently make reference to these treatments.

I. MARRIAGE, LEGITIMACY, AND NATURAL CHILDREN

Marriage was the essential institution for the preservation of *oikoi* ("families")[13] in Athens. Marriages produce children to carry on the traditions of *oikoi*, including the maintenance of household deities and cult and the burial of deceased parents; the births

[12]The law in the inscribed text was "republished" (and possibly revised) in 409/08 (*IG* I^{3}104 = Fornara 15B). See 43.57nn.

[13]The word can also mean "houses" or "estates" (i.e., "property"); the precise meaning is sometimes difficult to discern. See the Introduction to Dem. 43 at nn. 20–21.

of children prevent *oikoi* from becoming extinct. In the fourth century when these speeches were written, marriages between citizens and foreigners were unlawful: a male citizen, if he chose to marry, had to marry an Athenian woman; a metic ("resident foreigner"), if he chose to marry, was prohibited from marrying an Athenian.[14] By law, only two Athenian parents could produce a citizen child; it is a matter of controversy whether the two parents had to be married to each other.[15] If, however, they were married, and if the father acknowledged the child and carried out appropriate registrations for children born from citizen marriages (see III below), then one could say that, given the availability of witnesses to these various ceremonies, marriage was not only an institution for the preservation of *oikoi*, it was also the most reliable producer of new members to the citizen body.[16] There were no birth records in Athens. Children born of unmarried Athenians would find it more difficult to prove their citizenship than children born in wedlock: the former would not have the witnesses to paternal acknowledgment and registrations that were the norm for the latter. The children of unmarried Athenians were also unable to inherit from their fathers.

There were two forms of marriage in which legitimate citizen children might be born. In one, the girl's *kyrios* (her father or homopatric brother or paternal grandfather, who acts as her legal authority or representative)[17] "pledges" or "contracts" (*engyai*) her to

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[14]For a thumbnail sketch with bibliography regarding earlier laws of citizenship, see Scafuro 1994: 156–157 with nn. 1–10. The fourth-century laws referred to here appear in 59.16 and 52.

[15]For a clear statement of the evidence on both sides, see Rhodes 1981: 496–497 with bibliography. Scholars seem more and more ready to accept the view, based on substantial but circumstantial evidence, that marriage was a prerequisite for producing citizen children.

[16]Citizenship might also be granted to free noncitizens by decree of the Assembly, proposed at one meeting and then ratified at the next with a quorum of 6,000 in attendance (Dem. 59.89–90).

[17]If a woman's father has died, then her brother, if an adult, becomes her *kyrios*; if she has no adult brother, then her paternal grandfather. A law regulating the persons who may legitimately "pledge" daughters and marry

her future husband.[18] A dowry, while it was not a requirement, certainly was the norm in wealthy families.[19] The girl's *kyrios* would finalize these arrangements when he "pledged" her; the girl herself need not be present; indeed, her consent was not required. Later, her *kyrios* would hand her on (*ekdosis*) and thereby transfer his legal authority (*kyrieia*) to the husband; the wedding ceremony (*gamos*) would follow.[20] This is known as marriage by *engyē*.[21] The other form of marriage is by *epidikasia*, an official adjudication, by a magistrate or the court, of a girl to a husband who is her kinsman (it is called *diadikasia* if there is more than one suitor/claimant). Girls who were fatherless and brotherless were liable to such marriages; they were called *epiklēroi* (plural; *epiklēros* singular). The process by which an *epiklēros* was awarded to a husband is briefly sketched below (IV: "Claiming an Estate").

Marriages by *engyē* and *epidikasia*, then, would produce legit-

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epiklēroi is read to the court at Dem. 46.18 and examples appear in 40.7 and 43.23. A guardian might also be appointed by the Archon (*Ath. Pol.* 56.6).

[18]The woman's *kyrios* (e.g., her father) "pledges" (active voice of the verb) the girl to her future husband; the husband "accepts the pledge" (middle voice of the same verb); the woman "is pledged" (passive voice: as Todd 1993: 213 remarks, "she is not a contracting party but the object of an agreement"). See further Harrison 1968: 2; Sealey 1990: 25. The same verb (*engyai*) is found in contexts outside betrothal (to which the process of "pledging a daughter" only remotely resembles: see below, n. 21) and in leasing and selling transactions. For conjectures regarding the ages at which Athenians married, see Dem. 40.4n.

[19]In lawcourt speeches in which it is disputed whether or not a woman was respectably married, a speaker will often use as evidence the presence (or absence) of a dowry. See Dem. 40.7n.

[20]A husband might provide guardians, a husband, and a dowry for his wife in his will, and so might a father provide for his daughter, as Demosthenes' father did (Dem. 27.5, 28.15–16). See also below, 45.27–28 with nn.

[21]*Engyē* does not constitute the marriage in itself (note that Demosthenes' father had pledged his wife to Aphobus with a dowry [28.16] but the marriage never took place). "Betrothal," however, is too weak a word for translating *engyē*, because one requirement for legitimacy was birth from marriage by "pledging"; see Harrison 1968: 8–9.

imate citizen children. There were further options for producing such children. If the marriage was childless, the husband might divorce his wife, a rather simple affair,[22] and marry another Athenian woman who might then produce a child. Or, whether he was married or not, a childless man might adopt a child.

II. ADOPTION

Adoption in modern Western societies is commonly motivated by the desire to love and nurture a child without parents. Adoption in Athens, however, served the purpose of providing an heir to a childless man, an heir not only to substance but also to important obligations: carrying on the life of an *oikos* (i.e., preventing its "extinction") and its ancestral rites. Adoption was restricted to men who had no legitimate sons of their own. Those adopted suffered no disabilities, although an adopted son (perhaps only a son adopted *inter vivos* ["among the living"]) was not himself permitted to adopt.[23] There were three forms of adoption in Athens: *inter vivos*, testamentary, and posthumous.

1. Adoption *inter vivos* takes place during the lifetime of the adoptive father. The adoptee must be the child of Athenian citizens married to one another; bastard (illegitimate) children could not be adopted. The adoptive father would normally enroll an adopted son in his own phratry and deme at the appropriate times (see III). The adoptee would no longer belong officially to his natural father's *oikos*. For this reason, adoptees usually came from families with more than one son, so that at least one other son would be left to inherit the estate. Often the adoptee is related to his adoptive father. Thus, as part of the background presented by the speaker of 41, we learn that Polyeuctus had no sons but two daughters; he adopted his wife's brother and gave him his younger daughter to marry.

2. Testamentary adoption, as the name indicates, is effected by

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[22] For divorce in Athens, see Harrison 1968: 39–45.

[23] The baffling law is cited and quoted in 46.14.

a will: a childless man adopts a son or (less frequently) a daughter in his will;[24] the adoptee becomes the heir or heiress to his estate. The adoptee (or his guardian, if he were a minor) would have to present the will to the Archon before he entered the estate; once the Archon or the court had confirmed the will (IV) via an *epidikasia* (a hearing to adjudicate a claim), the adoptee would have to be registered in the phratry and deme of the deceased adoptive father.[25] Again, the adoptee is often related to the adoptive father.

3. Posthumous adoption, as the name implies, takes place after the death of the adoptive father. The term is used not of testamentary adoptions (which would also take place "posthumously") but of adoptions in which the deceased man had not during his lifetime chosen the heir who was to be adopted after his death. Little is known of the procedure. There are only seven or eight attested cases in Athens; it has been argued that posthumous adoption was restricted to an intestate heir who had previously been awarded the estate of his future adoptive father via an *epidikasia*.[26] Proximity of relationship to the deceased, as established by the court hearing, would then provide persuasive palliative to disgruntled and covetous kinsmen. The court's decision would not in itself constitute adoption but would allow one to take place. The adoption, overseen by interested kinsmen, may have consisted simply in the boy's introduction to the phratry of the deceased "adopter" (43.82); later, when he turned eighteen, he would be introduced to the deme of the deceased "adopter" (III). Once adopted and bearing a new identity (no longer the son of X but now the son of Y), the posthumously adopted son enters the estate as a legitimate son

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[24]Females are said to be adopted by will at Is. 11. 8 and 41 and possibly at 7.9; see Rubinstein 1993: 20. The adoption of a daughter would make her an *epiklēros* and so liable to marriage to her nearest kinsman.

[25]See Harrison 1968: 90.

[26]See Rubinstein 1993: 44, using the evidence of 44.36, 40, 43, 66; cf. Introduction to Dem. 44, n. 24 below. The adoption would take place after the *epidikasia*. See Rubinstein further on posthumous adoption (1993: 25–28) and on phratry and deme enrollments of adopted sons (36–45).

without undergoing a further adjudication. Posthumous adoptions are the subject of Orations 43 and 44.

Adoption was often deployed as an inheritance strategy. Adopting an heir by the first two methods was tantamount to choosing an heir. For the rich, testamentary adoption in particular afforded the adoptive father an opportunity to confer considerable material benefit on a favorite and to create eternally malign disappointment in a host of kinsmen who awaited the old uncle's death. Adoptions *inter vivos* and by testament might also be just a first step in a more purposeful plan: Step Two might require the adopted son to marry the adoptive father's daughter, who was an *epiklēros*. Posthumous adoption, on the other hand, provided material gain for the winning heir without requiring the blessing of (or even an acquaintance with) the adoptive father.

III. PATERNAL ACKNOWLEDGMENT AND INTRODUCTION TO PHRATRY AND DEME

In the absence of birth records, the demes and phratries of Athens played an important role in guarding the membership of the citizen body. Membership in a deme was the gateway to participation in adult civic life, and membership in a phratry was in practice a guarantee of citizen birth, even if not in itself a requirement for that citizenship.[27] Phratries in the fourth century were groups of people who seem to have regarded themselves as distantly related to each other (alleged "kin groups" in more ancient times); they celebrated the cult of Zeus Phratrios, Athena

[27] Rhodes and Osborne 2003: 34 neatly sum up the evidence for the relationship of phratry membership to citizenship: "Phratry membership is frequently included in Athenian citizenship grants (but not to groups: Lambert, *Phratries*, 51–54), would-be Archons are asked about their ancestral shrines of Apollo Patroös, which was probably tantamount to asking about their phratry membership (*Ath. Pol.* 55.3 with Rhodes *ad loc.*), and Athenians repeatedly used membership of a phratry to bolster claims to citizenship when challenged in the courts (e.g., Dem. 57 *Eubulides* 54), or disputed phratry membership to undermine status (e.g., And. 1 *Mysteries* 125–126)."

Phratria, Zeus Herkeios, and Apollo Patroös. The number of Attic phratries is not known; conjectures range vaguely from at least a hundred to several hundred; and two inscribed lists of individual phratries indicate twenty members in one and a hundred and twenty members in the other.[28] A deme, on the other hand, was a territorial unit, for example, a hamlet or small village, perhaps demarcated as such since "time immemorial";[29] it was also a political entity since the epoch of Cleisthenes, the great reformer and founder of democracy who in 508/7 BC made the citizens living in a deme the members of that deme.[30] He also made membership hereditary: in the fourth century a demesman of Acharnae might live in the deme of Rhamnous—but he would vote in the Assembly at Acharnae and attend cult celebrations there. There were 139 demes before the Hellenistic age. The full name of an Athenian citizen in formal documents (e.g., inscribed decrees) is given, for example, as "Demosthenes son of Demosthenes of [the deme] Paeania."

A father's acknowledgment of his son combines a number of civic and religious acts, none of which, in isolation, can be pointed to as the definitive act that confirms a child's identity as his father's son.[31] His acknowledgment of his son's paternity

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[28] References in Hansen 1991: 46.

[29] Many ancient deme names, e.g., Cholargos, Thorikos, Paeania, are preserved in modern-day Attica.

[30] The demes were distributed among ten "tribes," another Cleisthenic creation; each tribe comprised three batches of demes: one from the city, another from the inland region, and the last from the coast. The tribes were named after the heroes of Athens (e.g., Erectheus, Cecrops, Ajax). The Cleisthenic "tribes" were clearly not kin/linguistic units such as the tribes of native North American Indians, e.g., the Wampanoag of Rhode Island and Massachusetts; the designation of tribe by the name of an ancient hero created an imaginary kinship with that hero. The Attic tribes provided an organizing structure for the army and magistracies: each tribe, e.g., supplied one regiment for the army and the officer for that regiment who was called a *Taxiarch* (*Ath. Pol.* 61.3); each tribe supplied fifty members to the Council of Five Hundred (*Ath. Pol.* 43.2), who were allotted proportionally by the demes. For other officials voted for by tribe, see Dem. 39.7 and 17.

[31] See Scafuro 1994: 158–164 for relevant bibliography.

was solemnized during the first days after birth and confirmed on numerous important occasions as the child grew to manhood. On the fifth day after birth, the *amphidromia*, a purification ritual, would be celebrated; at this time, a father signaled his acceptance of the infant into his family by carrying him around the household hearth. On the seventh (*hebdomē*) or tenth day after birth (*dekatē*), there would be another celebration, when the infant was given a name.[32] The father's acknowledgment of paternity, witnessed by friends and relatives who attended the ceremonies, might later be used as evidence that the son was not a bastard in inheritance or citizenship disputes (e.g., Is. 3.6, 30, 33–34). Boeotus used witnesses to the tenth-day celebration as evidence of Mantias' paternity and conferral of name during the preliminaries to his lawsuit against Mantias in his attempt to win the recognition that would eventually lead to his entrance into phratry and deme (39.22 and 40.28).

Sons appear to have been introduced to their fathers' phratries on two occasions, once as infants or young children and later as teenagers.[33] Local phratries performed three ceremonies on the third day (called Koureotis) of the festival known as the Apatouria.[34] The first was the offering of the *meion*, a sacrifice that was apparently made by fathers to whom sons had been born during the previous year; the sacrifice may have been the occasion for the son's "first introduction" to the phratry.[35] The second of-

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[32]On the confusion in our sources between the *dekatē* and the *amphidromia* (another day on which infants were celebrated), see Golden 1986: 252–256.

[33]On the problematic nature of the two introductions, see the literature cited by Scafuro 1994: 185 nn. 27–32.

[34]The third of these, the *gamelia*, a sacrifice presented to his fellow *phrateres* by a young man at the time of his marriage, does not have relevance for the speeches in this volume.

[35]Is. 8.19 provides the form of words presumably used at that time: "Our father, after we were born, introduced us to the *phrateres*, having sworn in accordance with established laws, that he was introducing children born of an *astē* (a freeborn Athenian woman) who was pledged (i.e., married by *engyē*) to him." The formula also appears in Dem. 57.54, with slight altera-

fering, the *koureion*, was another sacrifice presented by the father that may have coincided with the adolescent's formal (second?) entry and enrollment into the phratry (usually) at the age of sixteen.[36] The procedure of enrollment for natural children was the same as for adopted children who would be enrolled in the phratries of their adoptive fathers.[37] A rejected candidate might appeal an adverse vote to the phratry (43.82) or to the court (59.59–60).

Enrollment in the deme of one's father was the most important step for acquiring citizenship, which was reserved for men. *Ath. Pol.* 42.1–2 describes procedure and requirements (trans. Rhodes 1984) for citizenship:

> Men belong to the citizen body if they are of citizen parentage on both sides, and they are registered as members of their demes at the age of eighteen. When they are registered, the deme members take a vote about them on oath, first to decide whether they have reached the age prescribed by the law (if they decide that they have not, the candidates return to the rank of the boys), and secondly to decide whether they are free men and born as prescribed by the laws.[38] Then, if they reject a man as unfree, he appeals to the jury-court, and the

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tion. Not all phratries may have had the same strict requirement concerning the limitation of admission to male children born of a woman who had been pledged by *engyē* to her husband; cf. the vaguer terminology of Is. 7.16. See Sealey 1990: 34.

[36]Our fullest account of a procedure for entry into a phratry is *IG* II^2 1237 (Rhodes and Osborne 2003: no. 5), but different phratries will have their own procedures.

[37]See Is. 7.15–17 for a description of the ceremony preceding the enrollment of an adoptive child. The enrollment took place at the festival called Thargelia; for an explanation of this apparent irregularity, see Wyse 1904: 558.

[38]At the beginning of this important passage, there is no mention that the Athenian parents who produce citizen sons must be married; the omission, however, is not proof that marriage was not required: the author of the *Ath. Pol.* not infrequently omits relevant data. Some scholars have interpreted the phrase "born as prescribed by the laws" as "born in wedlock," but the words may mean no more than "born with two Athenians as parents" (cf. *Ath. Pol.* 26.4).

> deme members choose five of their own number as prosecutors: if he is found to have been unjustly registered, the state sells him as a slave; if he wins the case, the deme members are obliged to register him. After this the council scrutinizes those who have been registered, and if anyone is found to be below the age of eighteen it punishes the deme members who have registered him.

Presumably, witnesses to the boy's parentage would have to be present at his deme enrollment to testify to the three criteria.[39] Attestation of age, status, and Athenian birth are interrelated in an important way: the assertion that a boy was born free eighteen years ago to a particular Athenian couple (XY) could, for example, be countered by a statement that X was living with Foreigner or Slave Z at that time, not Citizen Y.

IV. CLAIMING AN ESTATE

An inheritance in Athens could be claimed before a magistrate in a number of ways; legitimate sons, however, could enter their fathers' estates without any formal steps at all.

1. Entry into an estate (*embateusis*). A legitimate son or grandson (whether natural or adopted in the lifetime of the deceased) could simply take possession of the estate: he "entered" upon the property (*embateuein*). If another party was already in possession, and barred the heir's entry and so evicted him, the heir could bring a penal lawsuit for ejectment (*dikē exoulēs*).[40] If the heir won the suit (by proving that he was indeed the heir and his entry had been barred), he was permitted by law to take forcible possession of the property; the defendant both lost the property and was required to pay a penalty to the Treasury.[41]

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[39]Three witnesses are required to attest a boy's parentage for enrollment in a phratry at *IG* II² 1237, lines 71–78.

[40]In 44.32–34, the claimants (Aristodemus and his son) try to enter Archiades' estate (*embateusis*) and are ejected; they do not, however, follow up with a *dikē exoulēs*.

[41]See Harrison 1968: 217–220 for a discussion of the lawsuit. Dem. 21.44 mentions the double penalty (loss of property and fine); Wyse 1904: 434

Sons inherited equally—there was no right of primogeniture; daughters and granddaughters in the presence of their brothers were excluded from inheriting. When brothers or other joint heirs entered an estate, there would often be a division of the property. Disputes might follow: so it happened in the division of Mantias' estate, when the half-brothers sought the return of their respective mothers' dowries (Speech 40); it happened again in the division of Polyeuctus' estate, when one son-in-law tried to collect the remainder of his wife's dowry, allegedly secured against the house (Speech 41). Direct heirs, even if they had the right to enter their estates, may have found themselves embroiled in lengthy and bitter disputes.

2a. *Epidikasia* and *diadikasia*. All persons (apart from legitimate sons and grandsons who wanted to claim an inheritance), including those claiming by will, had to apply to the Archon for a hearing. Their claims were read out at the principal monthly meeting of the Assembly of the People (*Ath. Pol.* 43. 4). It may have been shortly thereafter that a herald went about, asking if anyone wanted to dispute a particular claim or put down a deposit for the hearing; he may also have advertised the date for the preliminary hearing (*anakrisis*) at this time.[42] Kinsmen would thus be informed and could act according to their rights and inclinations. If no one disputed the claim, the Archon or the court

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claims the penalty was equal in value to the property that had been unlawfully taken.

[42]When Uncle X applies for a hearing, he is given a date for the preliminary hearing or the *anakrisis* (see Dem. 46.22 and Harrison 1971: 89). If someone has already entered the estate as a legitimate son, then Uncle X will summon him to appear before the Archon, either for the first meeting (when he will apply for the *anakrisis*) or for the *anakrisis* itself. The herald's announcement is recorded at 43.5. It is debated at what point in the process the herald acted; some think it occurred after the adjudication (Harrison 1968: 159 n. 4); others, before (Wyse 1904: 375; Rubinstein 1993: 39 n. 17). There is no evidence that the herald announced the date, but it would make sense if he did. Although kinsmen who wanted to make a claim could simply go to the Archon's office to find out the date, foreknowledge would be useful for those living in the countryside.

formally awarded the estate;[43] the procedure was called *epidikasia* (an adjudication hearing for the award of an estate in which one claimant is involved).

The situation might quickly become complicated, however, when a wealthy and childless man died. Numerous kinsmen might then compete against one another, each claiming that he or she was the nearest survivor to the deceased. They would appear before the Archon on the announced day; he would officiate over the preliminary hearing during which they would present their relationship to the deceased.[44] One such claimant, for example, might produce a will according to which the deceased had adopted him posthumously as heir. Competing kinsmen might protest that it was a forgery or that it had been written by the deceased under circumstances that rendered it invalid in a court of law, such as lunacy, old age, the influence of drugs or illness, the persuasion of a woman (46.14). Kinsmen would present their claims in the hope of breaking the will. At the end of the meeting with the Archon, the number of claimants would have been determined as well as the number of voting urns (one or more claimants in the same kin circle, e.g., brothers of the deceased, would share the same urn: Is. 11.21–22) and the time allowed for pleading each claim.[45] A deposit (called a *parakatabolē*) of one-

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[43]It is a matter of controversy whether the Archon or the court would adjudicate an inheritance for which there was only one claimant; for different views and earlier bibliography, see Harrison 1968: 10 n. 3 and 159 n. 5. The court is the more likely adjudicator: a date for a preliminary hearing has been set; it is unlikely that any matter could be finally determined there.

[44]Is. 10.2 and cf. Is. 6.12–16; see Harrison 1972: 95–96.

[45]Speeches were timed by a water clock (*klepsydra*; see Boegehold 1995: 78–79), and each speaker was permitted a specific number of "water pitchers" (*choes*, pl.; *chous*, sing.) determined by the type of lawsuit and the value of the claim being sought (see *Ath. Pol.* 67.2). The best conjecture is that speeches in a *diadikasia* were allowed six *choes*, which would mean eighteen minutes (at the rate of one *chous* emptying in three minutes: Rhodes 1981: 720). The clock was stopped, however, when the evidence of witnesses was read to the court ("stop the water, please"). In Dem. 43.8 (a *diadikasia*), a higher number of pitchers was allowed each speech; possibly the regulations

tenth the value of the estate may have been paid at this time,[46] and certainly the day would be set for the hearing in chief. In court, each claimant (or claimant's advocate) would present his argument, and the jury's verdict would decide the case. The hearing was called a *diadikasia* (an adjudication hearing for the award of an estate in which numerous claimants are involved) and differed from other trials insofar as there might be any number of claimants, each of whom would be treated alike; in other words, there was no "plaintiff" and no "defendant." The judges cast their votes in the urns that had been set up for each claimant.[47]

2b. *Epidikasia* and *diadikasia* of an *epiklēros*. If the deceased had left a daughter and no sons, the procedure would be similar: her nearest kinsman (excluding a brother by the same mother) would appear before the Archon and claim her together with the estate; the claim would be read out at the principal monthly meeting of the Assembly at the same time as claims for estates (*Ath. Pol*. 43.4). The daughter was called an *epiklēros*;[48] the nearest English equivalent is "heiress," but the Athenian *epiklēros* differs from her modern English counterpart in that the former does not inherit in her own right but serves as the instrument through which the estate will be passed to her sons as soon as they come of age. If only one kinsman made a claim before the Archon and the

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had changed by the time of the composition of the *Ath. Pol*. See Introduction to Dem. 46, n. 2, for time allowances in private cases.

[46]The deposit was certainly required for disputes over estates that proceeded via a *diamartyria* and a *dikē pseudomatyriōn* (Is. 6.12); whether the deposit had to be paid by all claimants participating in *diadikasiai* is controversial; see Harrison 1971: 181–183 and Wyse 1904: 374–375.

[47]Voting procedure for trials in which there was a plaintiff and defendant differed from the procedure used in adjudications (as here) in which there might be numerous claimants. Whereas in the former there were two voting urns (*Ath. Pol*. 68.2–4), in the latter there were as many voting urns as there were claimants who based their claims on distinct grounds (Is. 11.21).

[48]Lit., *epiklēros* means "with (*epi-*) the estate (*klēros*)"—i.e., she is awarded, together with the estate, to the nearest kinsman of her father. See MacDowell 1978: 95–98; Schaps 1979: 25–47; Scafuro 1997: 281–305.

claim was legitimate, the Archon (or the court) formally awarded the estate together with the *epiklēros* to him; the procedure was called *epidikasia*. A rich *epiklēros* would often attract a number of suitor-claimants.[49] The procedure (*diadikasia*) would follow the same route as in the case of multiple claimants for an estate, with a preliminary meeting with the Archon to establish relationships and the number of claims and voting urns. In court, claimants for an *epiklēros* would have to prove proximity of relationship to the deceased and probably seniority as well. The girl who was awarded to her kinsman married him.

3. *Diamartyria* ("protestation") and a *dikē pseudomartyriōn* ("suit for false testimony"). A legitimate direct heir, whether a natural son (or grandson) or one adopted *inter vivos*, who enters the estate by *embateusis* (IV.1), might find his continued enjoyment of it threatened, for example, by a collateral kinsman. The latter might go to the Archon and claim the estate, saying that the heir was not a legitimate son or that the adoption was not legitimate, and then ask the court to decide the case (*diadikasia*, see 2a). The impugned heir has two choices at this point: he may submit to a hearing and the judges will then decide the validity of the claims made by him and his kinsman (as well as by any other kinsman who might come forward at this time), or he may make a formal protest (*diamartyria*) and furnish a witness who will maintain before the Archon that the estate is "not adjudicable" because a legitimate son of the deceased exists.

The second path (*diamartyria*) was the simpler, since the impugned heir need face only one claimant, but it was also perilous, since he must make a deposit (*parakatabolē*) of one-tenth the value of the estate.[50] If the collateral kinsman accepts the witness testimony as true, there is no trial, and the heir retains the estate (and gets his deposit back); but if, instead, the kinsman makes a

[49]A poor *epiklēros*, less a magnet than a rich one, was entitled by law to be dowered by her kinsmen if no one amongst them chose to marry her; the alleged law is inserted in 43.54.

[50]See Harrison 1971: 182.

formal objection, asserting that the *diamartyria* is false, then the kinsman brings a suit for false testimony (*dikē pseudomartyriōn*) against the heir's witness. Decision in this suit will precede the adjudication of the estate. If the witness is acquitted, the direct heir retains the estate. If the witness is convicted, then the direct heir is considered illegitimate and must withdraw. The winning kinsman then proceeds to an adjudication of the estate, possibly against other claimants—he will have gotten rid of one opponent (at least temporarily), but there may be others. Three speeches in the corpus of the Attic orators arise from *diamartyriai* (Is. 2, 3, and 6) and probably a fourth as well (Dem. 44).

4. A slightly different procedure would be followed if the court had already awarded the estate to a claimant. New claimants might come forward, as well as former claimants who had failed in their suits but now offered different grounds for their claims or objected that the original hearing had been wrongfully decided in their absence.[51] To institute a new hearing, the claimant was required by law to issue a summons to all those who were occupying the estate as a result of the earlier hearing; they were now to appear before the Archon and pay a deposit of one-tenth the value of the estate (Dem. 43.16 and *Ath. Pol.* 56.6). The subsequent trial, like the earlier one, was called a *diadikasia* but differed from it by virtue of the summons that initiated it; consequently, the summoner had something of the role of a plaintiff. Anyone who puts in a claim for the new trial is said "to file a counter-claim" (*antigraphesthai*).[52] Such suits could be brought during the lifetime of the first heir or heirs or within five years of his or their deaths.[53] This is the procedure that was used to reopen the dispute over Hagnias' estate in Oration 43 and over Comon's estate in Oration 48.

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[51]A law providing the procedure for instituting such suits is inserted at Dem. 43.16, paraphrased at 43.7, and alluded to at 48.30 and Is. 4.25. See Dem. 43.16nn. For discussion of the interesting implications of allowing former claimants to sue on a different ground, see Harrison 1968: 220.

[52]See, e.g., [Dem.] 44.39 and 48.1; Harrison 1971: 182.

[53]Is. 3.58. See Harrison 1968: 247–248.

V. THE LAW OF INTESTATE SUCCESSION

In the absence of legitimate sons and an uncontested will, the estate would pass to the nearest relative of the deceased in accordance with the procedures outlined above. Who was the nearest kinsman? The law providing the order of potential heirs when the deceased left no will is read to the court in 43.51 and is paraphrased or quoted in Isaeus 7.20–22 and 11.1–3, 11–13. As transmitted in these passages, the law has seemed to many scholars to be incomplete and corrupt rather than spurious.[54] In 43.51, it begins with the daughters of the deceased. Daughters without brothers are in a special category since they must be passed on along with the estate as *epiklēroi* to the nearest kinsman. Sons do not appear, either because the law has been abbreviated or because it was taken for granted that they could enter the estate without applying to the Archon.

In the absence of daughters of the deceased, the following circles of kin[55] are designated: (1) Homopatric (i.e., born of the same father) brothers of the deceased and their legitimate children (the latter are the nephews and nieces of the deceased); children of a deceased father divide his share equally; (2) homopatric sisters of the deceased and their legitimate children (nephews and nieces of the deceased);[56] and (3) other relatives on the father's side, as far

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[54]See Dem. 43.51nn.

[55]"Kin circle" or "inheriting circle" is my translation of the Greek term *genos* when used in the context of succession, frequently in the phrases "nearest by [or 'in (the)'] kin circle" (e.g., 43.3, 12, 13, 14, 17) and "on the basis of kin circle" (e.g., 43.5 and additionally in the witness documents inserted at 43.43–45); cf. Is. 11.1 and 3. Thompson 1976: 1–2 offers good reasons to avoid using "degree" or "stock" for *genos*; he uses "inheritance class." For the way a fourth-century Athenian may have envisioned such relationships, see Introduction to Dem. 43 at nn. 20–21.

[56]The sisters of the deceased do not appear as an inheriting kin circle in the law produced at Dem. 43.51; there is, however, a self-evident gap in that law (depicted by asterisks at 43.51) into which some scholars have inserted the sororal brood; the latter do appear in the second kin circle in the paraphrase of the law at Is. 11.2–3. See Dem. 43.51n.

as children of cousins (*anepsioi*).[57] The law read to the court at 43.51 goes on to say that males and the children born from males take precedence, if they are from the same direct ascendants, even if they are more remote in respect to kin circle. Furthermore, if there are no kin in these circles on the father's side of the deceased man's family, then succession passes to his mother's side, in the same order. Moreover, if there are no kin on either side belonging to these circles, then the nearest kinsman on the father's side inherits. Finally, illegitimate children, male and female, belong to none of these inheriting circles, and they may have no share in religious rites or civic privileges. This is the full extent of the obscure law cited at 43.51.

Some scholars think that the law specified additional kinsmen as follows:[58] (4) Paternal uncles of the deceased and their children (first cousins of the deceased) and grandchildren (first cous-

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[57]The phrase "cousins (*anepsioi*) on the father's side, as far as children of cousins" appears at Is. 11.2 (and cf. Is. 7.22 and 11.11–12) and is exceptionally vague, both in English and in Greek. In Greek, *anepsioi* sometimes seems to represent "first cousins," sometimes "first cousins once removed" (see, e.g., Dem. 43.41 and 49). The latter category in English is used of both (1) "children of one's first cousins" and (2) "children of one's grand-uncles and grand-aunts"; the "children of type (2) first cousins once removed" are "second cousins." (For this confusing terminology, see Harrison 1968: 146 n. 2.). Are the children of the *anepsioi* in the law, then, children of first cousins and so are "type (1) first cousins once removed"? Or are they children of type (2) first cousins once removed and so are "second cousins"? That is, does the law supply "type (1) first cousins once removed" or "second cousins" as the last inheriting circle (i.e., "the children of cousins")? See the Introduction to Dem. 43, after n. 15.

[58]The grounds for adding the circles pertaining to uncles and great-uncles derive from passages in the orators in which these kinsmen are shown to have the capacity to marry an *epiklēros* who is the daughter of a deceased sibling or nephew; since the law of intestate inheritance regulates not only who can inherit an estate but also who can take an *epiklēros* (together with the estate), then uncles and great-uncles must be included (and so, too, their children and grandchildren). References may be found in Harrison 1968: 145 n. 3 and 146 n. 2.

ins once removed);[59] then, paternal aunts and their children and grandchildren. (5) Paternal great-uncles and their children (first cousins once removed of the deceased)[60] and grandchildren (second cousins); then, paternal great-aunts and their children and grandchildren.[61] (6) Homometric brothers (born of the same mother but different fathers) and children; then, homometric sisters and children. (7) Maternal uncles and their children (first cousins of the deceased) and grandchildren (first cousins once removed); then, maternal aunts and their children and grandchildren. (8) Maternal great-uncles and their children (first cousins once removed) and grandchildren (second cousins); then, maternal great-aunts and their children and grandchildren.

While some of its terms are vague, the principles of succession articulated in the law are clear and comprehensible. Inheritance is shared equally by each family (*per stirpes* rather than *per capita*) in the inheriting circle.[62] Imagine that brothers (in the absence of sons and daughters of the imaginary deceased man) are to inherit and that of the original four brothers, one (P) has died without issue, another (Q) has also died but has left behind a daughter, and two brothers (R and S) are each alive with three children apiece. The inheritance will be divided into three equal shares for the three surviving families; one share will go to Q's daughter and a share apiece to R and S.[63]

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[59]These are "type (1) first cousins once removed"; see n. 57.

[60]These are "type (2) first cousins once removed"; see n. 57.

[61]If second cousins are added into the picture, succession would revert to the maternal side of the deceased only in the absence of second cousins once removed on the father's side.

[62]See Harrison 1968: 131 n. 1 and 147; Wyse 1904: 560–562 and 565. The speaker of Dem. 44.12–13 expounds the principle.

[63]That Q's daughter should inherit may seem problematic in view of the law's prescription that "males are to take precedence . . . even if they are of a remoter degree of kinship" (43.51). That principle, however, is met by another in the same law, that of representation (i.e., *per stirpes*): "If there are legitimate children born of the brothers, they are to be allotted their father's portion." See Wyse 1904: 565; similarly Harrison 1968: 147 with n. 2: "When the daughter of a paternal uncle was in competition with the son of a son of

These "circles" of kin are collectively known as the *anchisteia* (which is sometimes equivalent in meaning to "the order of succession"). The *anchisteia* provides not only the order of potential heirs in intestate succession but also the basis for determining precedence for marriage to an *epiklēros*. Archaic in origin, the *anchisteia* also provided the categories of men who could pardon involuntary killers of kin (Dracon's law on homicide) and may have demarcated those owing religious obligations to the dead from those who did not.[64]

TEXTS AND COMMENTARIES

I have followed the Greek text of Dilts' *Oxford Classical Text* (*OCT*) of Demosthenes for Speeches 39–40 (vol. 3, Speeches 25–40, 2008) and Rennie's older edition of the *OCT* for Speeches 41–49 (vol. 3, 1931). Departures from the text are mentioned in the notes. Dilts' vol. 4 with the remaining speeches became available to me only in late January 2010; I have spot-checked difficult passages but have not compared the new edition with the older consistently throughout Speeches 41–49. In the translation, I have used square brackets to indicate words that I have added to assist the reader; most often these are transliterations of Greek terms. I have used angular brackets to indicate words that have been added by modern conjecture to fill out the Greek text where editors think there might be gaps.

Moreover, while it is conventional to put square brackets around "Dem." when citing a speech that modern authorities

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a different paternal uncle—and equally with the issue of paternal aunts—the principle of representation prevailed, a principle expressed earlier in the law in relation to the deceased's brothers . . . ; in other words, the daughter of paternal uncle A would get A's share and the son of the son of paternal uncle B would get B's. . . ." This interpretation is contradicted by Is. 11.18, but there appears to be no very good reason to trust the speaker on this point; for a different view of this passage, see Thompson 1976: 28.

[64]See Wyse 1904: 566–569. The important position of members of the *anchisteia* in the prosecution of homicide and in the burial of the dead appears in the laws inserted in Dem. 43.57–58 and 62.

think was not composed by Demosthenes (e.g., [Dem.] 59), that practice has not been followed here; readers are referred to the introductions for comments on authorship.

The following editions of the Greek texts provide useful notes:

Oration 39: C. Carey and R. A. Reid, *Demosthenes: Selected Private Speeches* (Cambridge, 1985).

Orations 39–48: L. Gernet, *Démosthène: Plaidoyers Civils* II (Paris, 1957).

Orations 49–56: L. Gernet, *Démosthène: Plaidoyers Civils* III (Paris, 1959).

Orations 39, 40, 45, 46: F. A. Paley and J. E. Sandys, *Select Private Orations of Demosthenes, Parts 1 and 2* (3rd edition, revised, Cambridge, 1896–1898).

W. E. Thompson provides a useful commentary on [Demosthenes] 43 and Isaeus 11 in *De Hagniae Hereditate* (Leiden 1976), but he does not supply a Greek text. Useful notes are also found in the English translations of C. R. Kennedy, *The Orations of Demosthenes*, vols. 4 and 5 (London 1897).

39. AGAINST BOEOTUS I

INTRODUCTION

The two lawsuits represented by this speech and the next emerged from a series of disputes between two half-brothers who were born by different mothers to the same father, Mantias son of Mantitheus of the deme Thoricus. In the first suit, the plaintiff seeks to prevent the defendant from bearing the same name as he does, and in the second, he seeks to recover his mother's dowry from their father's estate. The plaintiff (and speaker) in both suits is Mantitheus son of Mantias and an unnamed woman, the daughter of Polyaratus. The defendant (whose speeches are not preserved) is the son of Mantias and Plangon the daughter of Pamphilus; this son calls himself "Mantitheus" but is called "Boeotus" by the speaker.[1] While Mantitheus (the plaintiff) appears to have been unsuccessful in stopping the defendant from using his name, in this Introduction and the next, the name "Boeotus" will be used for clarity and simplicity.

Mantias appears to have been the first in his family to participate in affairs of state.[2] He was a steward for the dockyards

[1] "Boeotus" was the name of Plangon's brother; her other son by Mantias has the name of her father. During the period when Plangon's brother bore the name, Athens was in alliance with Boeotia, but the speaker predicts that his half-brother will protest that the name "Boeotus" was given him as an insult. Indeed, "Boeotian swine" may be one of the earliest documented ethnic slurs; see Pindar *Olympian* 6.90 (with the scholiast ad loc.) and Plutarch (like Pindar, a native Boeotian) *de esu carnium* 1.6; cf. Horace *Epistle* 2.1.244.

[2] For details on the family of Mantias, see Davies 1971: 365–368.

ca. 377/6, trierarch perhaps in 365/4,[3] and perhaps General in 359. His wives were of more illustrious stock. His first wife Plangon was the daughter of Pamphilus of the deme Keiriadai;[4] he was a Hipparch (cavalry commander) in the Corinthian War (Lys. 15.5) and a General in Aegina in 389/8 (Xen. *Hellenica* 5.1.2); for failure of achievement there, he was prosecuted, probably for embezzlement, and his estate was confiscated and sold.[5] Mantias' second wife was a daughter of Polyaratus of the deme Cholargus and widow of Cleomedon, the son of Cleon, the famous fifth-century politician.[6] Her mother (who was the daughter of Menexenus and granddaughter of Dicaeogenes) belonged to an extremely wealthy Athenian family whose property is in dispute in Isaeus 5.

Demosthenes 39 and 40 are of interest to legal and social historians because they provide a bird's-eye view of insidious family dispute and pretrial maneuvers (oath-taking, private and official arbitration, and its nullification). They may also shed light on the question, Was legitimacy (birth within marriage) a requirement for citizenship?[7]

Background

As in many of the surviving private speeches, the speaker of Demosthenes 39 and 40 provides a detailed background for the

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[3]For the duties of a trierarch, see 39.8n.

[4]That Plangon was the first wife and the daughter of Polyaratus the second and that Boeotus was older than Mantitheus are inferences drawn from this speech and the next; if the inference is correct, it could only hurt the speaker's argument to give a correct chronology of the marriages since he is also arguing that he is the eldest son. For the argument that both Boeotus and the speaker were approximately the same age, see Humphreys 1989.

[5]The speaker reports that Pamphilus still owed the state 5 talents at his death (Dem. 40.22); if Pamphilus were a state debtor at death, then his status as an *atimos* ("disfranchised," see 39.15n and 40.22n) would have passed to his children (Plangon's brothers) and grandchildren (Plangon's children) until the debt was paid.

[6]See Dem. 40.6 and 25 with notes.

[7]See the Introduction to this volume at nn. 15 and 38.

cases he brings to court. The two trials emerged from a long-standing quarrel that first erupted in a lawsuit a decade before the suit over the name.[8] From the plaintiff's (Mantitheus') speeches, which are necessarily one-sided and no doubt misleading, we learn that Boeotus had sued his father Mantias to be recognized as his son (ca. 359).[9] As a result of Boeotus' suit, which had been decided before an official arbitrator, Mantias was compelled to recognize him as his son and so registered him in his phratry.[10]

Profound disenchantment with the settlement ripples through both speeches. The speaker insinuates that Boeotus was an illegitimate son of Plangon and an indeterminable father (Dem. 40.8). He himself, he tells us over and over again, is the son of Mantias and Polyaratus' daughter (40.6) and had undergone all the customary steps for attaining civic status: Mantias had acknowledged him with the conferral of the name Mantitheus at the time of his tenth-day celebration (Dem. 39.20–21) and had later enrolled him in his phratry (39.5, 20) and deme (39.29) under that same name. Boeotus, on the other hand, had had to sue Mantias for paternal recognition; without it, he could not be enrolled in Mantias' phratry and deme and thus participate in civic life; moreover, he could not inherit from Mantias' estate. Boeotus won that suit, but Mantias had conceded to the "recognition" only when he was de-

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[8]The dates in this section, following Davies 1971: 365–368, are based on: (1) The battle of Tamynae, mentioned at 39.16 as being recent, is dated by modern historians to 350, 349, or 348; since this date is uncertain and the date of the trial depends on it, only proximate dates of other events can be given. (2) The speaker refers at Dem. 40.3, 18, and 43 to eleven years of unmet demands made to his half-brothers (presumably at his father's death; see below, n. 14). (3) Cammys, the tyrant of Mytilene (Dem. 40.37) was overthrown in 346. (4) Dionysius of Halicarnassus *On Dinarchus* 13 tells us that there was a "two- or three-year" interval between this speech and the next.

[9]The specific type of suit that could be used to win paternal recognition is not known, but because it was heard by an official arbitrator, it must have been a private suit (*dikē*) rather than a public prosecution (*graphē*).

[10]For a son's introduction to the phratry and deme, see the Introduction to this volume, III.

ceived (so Mantitheus claims) by Boeotus' mother during the official arbitration that had preceded the trial. Although Plangon had agreed in private, allegedly in exchange for a sum of money deposited with a third party, to swear under an oath tendered by Mantias that he was *not* Boeotus' father, she instead swore that both Boeotus and his younger brother Pamphilus were indeed his sons (39.3–4, 40.9–11).

The facts of this earlier case are difficult to discern. While Mantias may have acknowledged Plangon's son Boeotus at birth and while he may even have named him "Mantitheus" as Boeotus and his witnesses claim (39.22), he failed to carry out an essential duty of a father who intends his son to be a citizen: he did not enroll Boeotus in his phratry. It seems, then, that Mantias may have informally repudiated him at some point after birth, and when he finally did enroll him as a result of the suit initiated by Boeotus, he may have registered him under the name "Boeotus" as Mantitheus' witnesses probably claimed (39.5 and 36). Some scholars have suggested that Mantias at first refused to enroll Boeotus in his phratry because Mantias had not really married Plangon and so Boeotus was illegitimate. That suggestion, however, is not plausible: Plangon's family certainly would not have put her in the position of a concubine, even if accompanied by a dowry. Moreover, the speaker never explicitly says that Plangon was *not* married to his father. Other explanations are that Mantias had married Plangon but later suspected her fidelity or that he wanted to dissociate himself and his estate from the debt that Plangon's children inherited from her father Pamphilus.[11] Much is obscure; nevertheless, in view of the content of Plangon's oath before the arbitrator (39.3–4 and 40.10–11), that Mantias was the father of both her sons, the issue was probably paternity (and therefore adultery) coupled with legitimacy.

After Mantias' death (ca. 358), Mantitheus admitted his half-brothers Boeotus and Pamphilus (now citizens and acknowledged sons of Mantias) into his father's house to share the estate, but he now demanded the return of his mother's dowry; Boeotus

[11] See n. 5.

and Pamphilus in turn demanded the return of Plangon's dowry. Upon the advice of unnamed individuals, the three half-brothers divided the property amongst themselves but postponed apportioning the house and household slaves: the house was reserved for payment of the dowries once their existence and amounts were determined; the slaves were reserved for interrogation (40.14–15). The two parties then filed their suits. Before going through the official court channels, however, the parties opted for a private arbitrator and tried to settle their differences out of court. To no avail: the speaker claims that his opponents did not appear for the meetings, and the private arbitrator, Solon of Herchia, eventually died (40.16).

Mantitheus and his half-brothers then started their suits anew, and their cases were first heard by an official arbitrator (mid-350s?). Most private lawsuits fell to the jurisdiction of the Forty to which each of the ten tribes allotted four members each year. The four members belonging to the tribe of the defendant decided cases that made claims for ten drachmas or less; claims over this amount they passed on to an official arbitrator. The latter was a layman in his sixtieth year, and his task was first to try to reconcile the disputants and then, if this failed, to render a decision that would not be final, unless both parties agreed to it.[12] Either party could appeal to a court, but the arbitrator had to be notified on the spot so that the documents (e.g., witness testimonies, challenges) could be preserved for trial.[13]

In Boeotus' case against Mantitheus, both parties appeared for the hearings, and the official arbitrator decided in Mantitheus' favor; the speaker tells us that Boeotus "abided by the decision of the arbitrator" (40.31, 39, and 42). The case was therefore over and could not be tried before a court. In the speaker's suit against his half-brother, which he brought against "Boeotus" rather than against "Mantitheus" (39.16)—a mistake, as he learns later (or so he says)—Boeotus did not appear for the meetings before the official arbitrator, and in his absence the arbitrator gave his ver-

[12] See *Ath. Pol.* 53.2–4.

[13] See 39.17n and Rhodes 1981: 589.

dict in favor of Mantitheus (39.37). Boeotus, however, did not sit quietly with the result; he protested the case on the grounds that whereas the verdict had been given against "Boeotus," his name was "Mantitheus" (40.18). The case was therefore declared null and void (39.18); if Mantitheus should still want to recover his mother's dowry, he would have to initiate the suit all over again, this time against "Mantitheus."

The lapse of time between the speaker's first (inconclusive) suit over his mother's dowry (40.16–18) and the suit represented by Demosthenes 40 is not certain.[14] During this interval, however, he sued Boeotus over the use of the name "Mantitheus" (Dem. 39): the arbitrator's declaration that his first suit about the dowry was "null and void" because he used the name "Boeotus" prompted the speaker to bring the present suit over the name (ca. 349).[15] This suit, too, had had an inconclusive ending before an official arbitrator (39.37–38: Boeotus did not appear, the arbitrator decided in favor of Mantitheus in absentia, and Boeotus later had the decision declared null and void). The suit for the name was reinstituted after an interval of unknowable (but probably short) duration. Two or three years after that, Mantitheus reinstituted his suit against Boeotus for the recovery of his mother's dowry (ca. 347). Mantitheus' suit for the dowry (ca. 347), because of its "false start" (in the mid-350s?), is thus intertwined with the suit for the name (ca. 349).

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[14]The "eleven years" mentioned in Dem. 40.3 probably comprise the interval since Mantias' death and the *beginning* of the feuding over the estate (i.e., counter-demands, not necessarily lawsuits, for dowry et al.) rather than the distance from the first (inconclusive) suit against Boeotus (similarly: Gernet 1957: 32).

[15]The suit over the name has left its mark on the speaker of Speech 40: while he uses the name "Boeotus" twenty-two times in Speech 39, he uses it only six times in the longer Speech 40, always in reference to the past (e.g., "he enrolled the defendant as Boeotus," Dem. 40.11), except on the one occasion when he condescends to use his half-brother's "real" name: "I think that Boeotus—or Mantitheus—or whatever name he likes to be called . . ." (40.20). This change in usage between one speech and the other might reflect a change in speechwriter, but more likely it reflects the speaker's defeat in the case about the name.

To sum up: The background to the trials shows an array of pretrial maneuvers, especially in the manipulation of decisions by official arbitrators who decided four of the cases. The chronological order of the suits is as follows: (1) Boeotus' suit against Mantias over his status, decided before the official arbitrator; (2) the countersuits of Boeotus and Mantitheus, each to recover his own mother's dowry, of which (a) the arbitrator's decision in Mantitheus' suit against Boeotus was declared null and void and (b) the decision in Boeotus' suit against Mantitheus was accepted; (3) Mantitheus' suit against Boeotus over the name, in which the arbitrator's decision was declared null and void; (4) after a perhaps short interval, Mantitheus' renewal of the suit over the name (Dem. 39); and (5) Mantitheus' new suit against Boeotus for the recovery of his mother's dowry (Dem. 40).

The Dispute in Demosthenes 39

The full designation of an Athenian male in official documents of the fourth century is his given name, followed by the name of his father, and then the name of his deme;[16] accordingly, the speaker of 39 is known as Mantitheus son of Mantias of the deme Thoricus. His half-brother also uses this name, and the speaker contests his "right" to do so. "Right" is qualified by quotation marks since there does not appear to have been any law that restricted the use of a name to one member of a family, and, indeed, Mantitheus does not adduce any. But if Boeotus does not appear to have broken any specific law, by what remedy (i.e., by what kind of lawsuit) did Mantitheus bring the case into court?[17] Some

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[16] See the Introduction to this volume, III.

[17] At the very end of the speech, Mantitheus refers to a law by which "fathers have the authority not only to confer the name at the outset but also to erase it and repudiate it publicly if they desire" (39.39), but this law (for which 39.39 is the only ancient testimony) may not have been applicable here since Mantias does not appear to have repudiated Boeotus formally (*pace* Gernet 1957: 10). Mantias had refused to acknowledge Boeotus *by his passivity*, that is, by *not* registering him with his *phrateres*; after Mantias accepted the arbitrator's verdict and registered him, there was probably no legal bar to keep Boeotus from taking any name he liked.

scholars have suggested that he may have sued for damages (*dikē blabēs*);[18] the plaintiff's appeal to the judges in Demosthenes 40 adds some support to that suggestion: "If you should think that I suffered terribly and that the damage was substantial, make him use the name Boeotus" (40.35, and cf. 39.5 and 13).

While the "right" to the name "Mantitheus" is the subject of the current trial, Boeotus' acknowledgment by his father and enrollment in his phratry, both the results of the dispute resolved perhaps a decade earlier, are intimately connected to the speaker's argument that Boeotus' acquisition of the name Mantitheus, when his paternity was established in so questionable a way, is flat-out wrong. Mantias had been compelled to register Boeotus with the *phrateres* and had enrolled him under the name Boeotus, but it was Boeotus who subsequently registered himself as "Mantitheus" before the demesmen—Mantias had died beforehand. Not only is Boeotus' appropriation of the name wrong, argues the speaker, it has led to the (mis)identification of one "Mantitheus" with the other, and this has had serious consequences and has the potential for much worse.

Of interest in the speaker's presentation of his argument is his repeated use (twenty times) of a verb and noun for Mantias' recognition of Boeotus that would seem to refer to an adoption.[19] Does this mean that Mantias was in fact compelled to adopt Boeotus and his brother Pamphilus? Gernet has suggested that the recognition of paternity in Athens in cases where a father had withheld acknowledgment at birth or rescinded it at a later time[20] took the form of an adoption, that is, by introduction into the

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[18]E.g., Todd 1993: 281–282. For a different view, see MacDowell 1978: 60–61.

[19]Dem. 39.4, 6, 18 (twice), 20 (twice), 29, 30, 31, 32, 33 (twice), 35 (twice), 36; 40.2, 26, 27, 28, 54. In these two speeches, the verb *poieisthai*, lit., "to make for oneself," i.e., "to adopt" (cf. Lys. 13.91) is more common but occasionally a noun is used: *poiēsis*, lit., "making," i.e., "adoption," both in contexts in which adoption could be meant and in contexts in which it seems impossible (e.g., Dem. 40.26).

[20]It would be absurd to argue that the Athenians had a procedure for legitimizing bastards; see Harrison 1968: 68–70.

phratry of the father, followed by enrollment in his deme. Both steps (phratry and deme introductions) also constituted an "adoption" by a father of a son not born of his own body;[21] and these steps were no different from the ones taken to introduce a son whose legitimacy had not been questioned: the son was presented in either case as "son of So-and-So" to phratry and deme. In the case of an "adoption" such as that of Boeotus by Mantias, however, the father's declaration was (more?) markedly a recognition of paternity.

According to Gernet, then, the use of terms of adoption for Mantias' recognition of Boeotus signals the juridical category to which the *late* recognition of a legitimate son properly belongs. Wyse (1904: 718), on the other hand, thought that the verb always refers to the adoption of a child born of a different father (i.e., the usual case of an adoption in Athens) and that the speaker of 39 and 40 is purposefully misusing language, using the insulting word *poieisthai*, "adopt," to describe the "recognition" of Boeotus and Pamphilus by his father to suggest that Mantias never believed them to be his sons.[22]

For all the simplicity of Wyse's conclusion, it may be better to accept Gernet's explanation that Mantias' recognition of Boeotus was carried out by the procedure of adoption.[23] By this explanation, there is no strict equivalence between the English noun "adoption" and verb "to adopt" on the one hand and the Greek noun and verb on the other. In the following translation of the two speeches, the verb (always in italics) is usually translated as "adopt" but sometimes as "acknowledge." Only the con-

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[21] See the Introduction to this volume, III.

[22] Wyse 1904: 718. Other explanations may be found in Rudhardt 1962: 50–56 and Harrison 1968: 84 n. 2 (a kind of combination of the views of Gernet and Wyse).

[23] Wyse's conclusion will not explain the most puzzling instance, where the speaker asks: "Why in the world should my father have denied they were his sons and, instead, have *adopted* (i.e., acknowledged) me?" (40.26). Gernet can explain this as a confusion of a father's declaration during the introduction of an unproblematic child (my term) to a phratry with his recognition of paternity since the form of the declaration will be the same.

text indicates the special nature of "adoption" as the acknowledgment of a natural son whose pathway to legitimation has been rocky rather than that of a natural son whose pathway has been clear.

Even on the evidence of Mantitheus' speech (and Mantias' compliance with the arbitrator's verdict after Plangon's "false" oath is weighty), Boeotus' claim to his father's name appears to have been a substantial one. When Mantitheus finally brought the suit to recover his mother's dowry from his father's estate, he was compelled to lodge it "against Mantitheus" (40.17–18); and the names of both half-brothers appear in a naval inscription of 342/1 as "Mantitheos of Thorikos" (*IG* II² 1622.442–443). Boeotus, we may assume, won the case about the name.

Authorship of the Speech

Demosthenes' authorship of the speech has rarely been doubted in modern times (but see Dionysius of Halicarnassus, *Dinarchus* 13). Its style is lively; in its *ethopoiia* ("adaptation of speech to character")[24] the author approximates the success he achieves, for example, in Oration 54 in his portrayal of the injured plaintiff Ariston. Here, in a case where both speechwriter and speaker may have realized that theirs was a losing battle, Mantitheus, although he is indignant—especially as he graphically imagines all potential mishaps if both he and his half-brother continue to use the same name—nevertheless displays a sense of absurdity that is appealing both for its humor and barbed wit.

39. AGAINST BOEOTUS I, ABOUT THE NAME

[1] It was not at all because I love to make trouble—I swear by the gods, oh judges!—that I initiated this suit against Boeotus; I was aware that many would consider it strange—my bringing suit just because somebody thinks he ought to have the same name as I. But in view of what will happen if I don't get this problem re-

[24]Carey and Reid 1985: 73.

solved, I had to bring the case before you for judgment. [2] Now if the defendant claimed he was the son of any other father and not of mine, you would rightly consider me a troublemaker, worrying about what this man chooses to call himself. But consider: he initiated a suit against my father and enlisted the support of a factory of extortionists[25]—men like Mnesicles whom you all probably know, and Menecles, the fellow who convicted the priestess Ninus,[26] and similar characters; in the suit he claimed he was my father's son by the daughter of Pamphilus,[27] that he was suffering terrible hardship and was being robbed of his civic rights.

[3] My father (for the whole truth will be told, judges) was afraid to go to court in case anyone should confront him there and allege he had been injured elsewhere by him since he was a man engaged in public life. At the same time, he was deceived by the defendant's mother, who had sworn that if my father were to offer her an oath about these matters,[28] she would refuse it and there would be no further dealings between them; and after she had money deposited for her with a third party, my father offered her the oath on these terms.[29] [4] But she accepted the oath and

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[25]The phrase *ergastērion sykophantōn* ("factory of extortionists") appears again at Dem. 40.9. A *sykophantēs* (translated here as "extortionist") is often used as a term to malign voluntary prosecutors who are depicted as interested not in justice but in enriching themselves, either by threatening litigation and accepting payment not to carry out the threat or by collecting the financial rewards offered by the city to successful prosecutors in many public cases.

[26]According to the scholiast on Dem. 19.281, Menecles may have charged the priestess Ninus in a prosecution for impiety, alleging that she was making love potions for young men. Mnesicles is otherwise unknown.

[27]The given names of respectable women are rarely spoken in the orators; the designation of Boeotus' mother as "the daughter of Pamphilus" is the usual way of naming women; see §9 below with note. On Pamphilus, see the Speech Introduction and also Dem. 40.20n.

[28]I.e., that he, Mantias, was Boeotus' father (see Dem. 40.10).

[29]Further details are given in Dem. 40.9–11, where we are told that the oath was part of a "challenge" (see 40.10n). Mantias had arranged with Plangon, Boeotus' mother, that he would challenge her to swear an oath (40.10) in the course of the official arbitration and she would refuse. When Plan-

swore that not only the defendant but also his brother, her other son, were children of my father! Once she had done this, it was necessary to introduce them to the phratry members—there was no reasonable way out.[30] He introduced them, *adopted* them,[31] and, to cut the story short, he registered them in the phratry during the Apatouria:[32] the defendant here as "Boeotus," and the other as "Pamphilus." And "Mantitheus" is the name under which I had been registered.

[5] My father's life ended before the registrations in the deme took place, but the defendant went before the demesmen and, instead of "Boeotus," registered himself as "Mantitheus." How much damage he caused first me by doing this and then you, I'll explain as soon as I furnish witnesses for my statements.

[WITNESSES]

[6] Well, you've heard from the witnesses how my father registered us;[33] now I'll show you that I brought this suit justly and out of necessity, seeing that the defendant felt no obligation to abide by the terms of the registration. For assuredly I am not so stupid or inconsistent in my conduct as to agree to take a third of my father's estate (all of which at one time was to be mine) and to rest content with that since he had *adopted* the two men as sons—yet in the matter of the name to be contentious—except that for

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gon instead agreed to swear the oath, the arbitrator gave the verdict against Mantias (cf. 40.11); that Mantias decided to abide by this verdict rather than reject it and go to court suggests that his offer of the oath implied he would abide by its outcome (cf. Dem. 40.11n and Arist. *Rhetoric* 2.1398b2); similarly Gagarin: 2007: 39–42.

[30] For the importance of phratry membership, see the Introduction to this volume, III.

[31] For the translation of the verb *poieisthai* as "adopt" (and sometimes as "acknowledge"), see the Speech Introduction at nn. 19–23.

[32] See the Introduction to this volume, III, nn. 33–37.

[33] The documents read to the court in the course of this speech have not been preserved.

me to change my name would entail great dishonor and cowardice, and for him to have the same name as I would be impossible for many reasons.

[7] For first of all (assuming that public interests should come before private), how will the city assign us tasks if something needs doing? By Zeus—the tribesmen will appoint us just as they appoint other men:[34] "Mantitheus son of Mantias from the deme Thoricus," if they are appointing a Chorus Producer or Athletic Supervisor or Provider of Public Feasts or any of the other offices.[35] [*The speaker turns to Boeotus*] What, then, will indicate whether they are appointing you or me? For you will say it's I, and I'll say it's you. [8] Or suppose that after this the Archon calls upon us—or any other magistrate whose responsibility it is.[36] We don't heed that call; we don't shoulder the public burden. Which one of us will be liable to the penalties set by law? And how will the Generals enroll us if they are registering names for a symmory or appointing a trierarch?[37] If there is a military campaign, what

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[34]The tribes in the fourth century, as this passage shows, continued to play a role in the appointment of magistrates and members of administrative boards; see the Introduction to this volume, n. 30 and below, 39.17.

[35]These rich citizens performed public services (liturgies) by providing for festivals or military endeavors: see the Introduction to Dem. 42, n. 1. "Chorus producers" (*chorēgoi*) took general and financial responsibility for a chorus participating in a festival (*Ath. Pol.* 56.3 and Ant. 6). "Athletic Supervisors" (*gymnasiarchoi*) provided for the teams competing in the torch races. "Providers of Public Feasts" (*hestiatoi*) were rich citizens who funded tribal feasts at the time of the Dionysia and Panathenaea festivals.

[36]I depart from Dilts' text and (following Blass) delete *hē dikē* ("the lawsuit") from the text; retention would require a translation such as "or any other magistrate before whom the lawsuit is." The next sentence shows, however, that the speaker is imagining being called upon to undertake a liturgy and not to answer a charge in court.

[37]Tax-paying companies (*symmoriai*) were groups of wealthy citizens instituted in 378/7 to simplify the collection of the property tax, and in 358/7 symmories were assigned to share the expenses of a trierarchy to equip and command a warship for one year. See the Introduction to Dem. 42 at nn. 2–4.

will indicate which one of us has been selected?[38] [9] And if any other magistrate—for example, the Archon, the King Archon, or the Stewards of the Games[39]—assigns a public service, what will indicate which one of us they are appointing? By Zeus—will they be adding "the son of Plangon" if they register you, and if me, the name of my mother?[40] Really now—who ever heard of such a thing! And what kind of law allows this addition or any other, except for the names of father and deme? Since these names are the same for the two of us, great confusion will follow.

[10] [*To the judges*] Come now—suppose that "Mantitheus, son of Mantias from the deme Thoricus" is called upon to be a judge (*kritēs*):[41] what would we do? Would both of us go? Indeed, what will indicate whether you or I have been summoned? By Zeus, if the city allots any office, such as Councilor or *Thesmothetēs*[42] and so on, what will indicate which one of us is allotted unless some mark is added to the bronze plaque of allotment[43] as it might be

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[38]The names of hoplites ("heavy infantry") who were called up for service in certain cases of partial mobilization were put on lists, tribe by tribe; each list was affixed to the statue, set up in the Agora, of the Eponymous Hero for a particular tribe; Lys. 9.15, 14.6; Aristoph. *Peace* 1180–1184 and *Knights* 1369.

[39]The "stewards of the games" or "prize setters" (*athlothetai*) were a board of ten (one from each tribe) with particular responsibility for contests and prizes at the Panathenaea (*Ath. Pol*. 60, 62.2).

[40]The unheard-of suggestion no doubt expects a laugh from the audience. Observe that the speaker mentions the name of his half-brother's mother, but not the name of his own; see above, 2n.

[41]The *kritēs* is not a judge in the courtroom (who is called a *dikastēs*); often, *kritēs* is used of a judge in the dramatic contests.

[42]A councilor is a member of the Council of Five Hundred (see 39.7n). The *Thesmothetai* were six judicial officials who together with the King Archon (*basileus*), Eponymous Archon (the Archon whose name designated the year), and Polemarch formed the board of nine Archons, an annual board of allotted magistrates in Athens.

[43]The bronze "plaque of allotment" (*pinakion*) is a thin, roughly rectangular "identification card" provided for each man who fulfills requirements (Athenian citizenship and appropriate age) for inclusion in the allotment

to another object? Yet even then, most people won't know whose plaque it is. So Boeotus will say he is the allotted magistrate, and I'll say I am. [11] Our only recourse will be the courts. Well, then, the city will appoint a court for each of these cases, and we'll be robbed of the right that belongs to everyone equally, to hold office when he's been allotted one; instead, we'll sling mud at one another, and the one whose argument prevails will hold office. Now tell me, which would be better: eliminating our existing difficulties or creating new quarrels and scandals? For this will be the inevitable outcome whenever we disagree over an office or anything else.

[12] And what if—all possibilities must be examined—one of us should persuade the other to yield the office to him if his name is drawn and he's allotted in this way? Isn't this the same thing as one man using two plaques for the allotment process? And will we be able to do with impunity something for which the law prescribes the death penalty?[44] "Of course we could, but we wouldn't do that," you might say. Well, I know I certainly would not. But for some people it's deplorable even to be liable to such a penalty when it can be avoided.

[13] Well, then. Those are injuries the city suffers. What injuries do I suffer, personally? Observe how serious they are, and then consider whether I'm right, for my injuries are far more serious than those you've heard so far. You all know that when Menecles was alive, Boeotus was good friends with him and his companions; you also know that he now goes around with other men no better than Menecles and that he has the same aspirations as they have, including a desire to be reputed a "skillful litigant."[45] And by Zeus, perhaps he is! [14] Suppose, then, that some day he engages in some of the same practices as they—indicting or de-

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pool. It is inscribed with his name and the names of his father and deme; see Boegehold 1995: 32, 38, 59–64.

[44]The law is known only from this passage.

[45]"Skillful litigant" (*deinos*) might also be translated as "a clever fellow" or "an eloquent speaker." For Menecles, see 39.2n.

nouncing or informing against or arresting people[46]—and incurs a penalty to the treasury for any of these practices (for human fortune is variable, and you always know how to put even the very "skillful litigants" in their place when they go too far). How will *his* name and not *mine* be registered as a state debtor? "Because, by Zeus, everybody will know which of us was fined," you'll say. [**15**] Splendid. But suppose—and this could happen—time passes and he doesn't pay the fine: how will *his* children and not *mine* be registered as state debtors when our names and our father and the tribe and everything else are the same? And what if someone should bring a suit for ejectment against him, saying it had nothing to do with me but then, after establishing his claim as a valid one, he should register it?[47] How will he have the judgment entered against him and not against *me*?[48] [**16**] And what if he should fail to pay a tax? Or what if this name of ours is implicated in another suit or linked with a scandal? What ordinary person will know which of us is meant, when there are two Mantitheuses with the same father?

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[46]These are all ways of initiating legal action. Prosecutors in many kinds of public procedures (e.g., indictments, arrests) incurred a penalty of 1,000 drachmas if they failed to win one-fifth of the votes. A prosecutor who had incurred such a penalty and did not pay it would become a state debtor and would suffer *atimia*, the loss of political rights, the right to legal protection, and the right to enter the marketplace and sanctuaries. *Atimia* would cease upon payment of the debt; but if the debt were still unpaid at the time of death, the children of the debtor would inherit both the debt and the *atimia*.

[47]A suit for ejectment (*dikē exoulēs*) was a remedy for a plaintiff who had failed to collect from the losing defendant whatever payment the court had voted; see Dem. 30 and 31. That same plaintiff, if he won the subsequent suit for ejectment, could then seize the defendant's property in payment of the debt (cf. the Introduction to this volume, IV). The losing defendant had his name recorded on a public list (our evidence is this passage) and was required to pay to the Treasury the same amount he owed the individual (Dem. 21.44).

[48]In Dem. 40.34, Mantitheus the plaintiff says that the defendant (Mantitheus, a.k.a. "Boeotus") had in fact claimed that a penalty in an ejectment suit had been incurred not by him but by Mantitheus the plaintiff.

Well, suppose that he were charged with shirking military service and were performing in a chorus when he should have been on army duty? In fact, just recently, when the rest of the soldiers went to Tamynae,[49] he stayed behind here in Athens celebrating the Feast of the Wine Jugs,[50] and he remained here and performed in a chorus during the Dionysia, as all of you who were in town saw. [17] After the soldiers returned from Euboea, he was summoned to court for desertion,[51] and I, as Taxiarch of the tribe,[52] was compelled to accept the charge against my own name with patronymic attached! And if funding had been available for jury panels,[53] clearly I would have brought the case to court![54] If this hadn't happened after the *echinoi* were already sealed,[55] I would've furnished witnesses for you.

[18] Well, then—suppose he were summoned on a charge of

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[49]A town in Euboea. The tyrant of Eretria, Plutarchus, had asked for aid from Athens and the Athenians sent a force under Phocion (Dem. 5.5; Aes. 3.86–88; Plut. *Phocion* 12). The date of the Athenian expedition is uncertain and has been assigned to 350, 349, and 348.

[50]The "Feast of the Wine Jugs" (*Choai*) was celebrated on the second day of the three-day "Flower Festival" (*Anthesteria*), on the 11th, 12th, and 13th days of the month *Anthesterion* (January–February). The City Dionysia was celebrated in *Elaphebolion* (February–March).

[51]A law prohibiting desertion (*lipotaxia*) is paraphrased at Lys. 14.5.

[52]Each tribe elected a commander called a Taxiarch for its regiment of hoplite soldiers; see *Ath. Pol.* 61.3.

[53]Drains on the Treasury are occasionally said to have caused temporary closings of the courts in Athens; see also 45.5.

[54]This could mean either that as Taxiarch he presided over the proceedings or that he prosecuted the case; see Harrison 1971: 33 n. 1.

[55]*Echinoi* (pl.; *echinos*, sing.) were pots with lids used to preserve documents for trial. Litigants who want to appeal the verdict in an official arbitration to a court "place the testimonies, challenges, and laws in *echinoi*, those of the plaintiff and those of the defendant separately; the *echinoi* are sealed, with the verdict of the arbitrator, written on a tablet, fastened to them. . . . [In court] no laws, challenges, or testimonies may be used except those cited before the arbitrator and placed in the jars" (*Ath. Pol.* 53.2–3). For examples, see Boegehold 1995: 79–81.

pretending to be a citizen?[56] He does offend many people, and the way my father was forced to *adopt* him isn't a secret. At the time when my father would not *adopt* him, you judges believed that his mother was telling the truth; but now that his birth has been established and he's such a troublemaker, you'll at some point reverse your opinion and believe my father! And suppose that he expects a conviction for giving false testimony in a suit when he was just "lending his friends a hand" and allows it to be decided in absentia?[57] Do you think it a small injury, men of Athens, that I must share this man's reputation and deeds all my life?

[**19**] Observe further that the fears I've expressed to you are not empty: he has already stood trial in several cases in which, though I'm completely innocent, my reputation is damaged along with his. He even tried to win the magistracy to which you elected me.[58] Because of this name, then, I've found myself in many intolerable situations—and so that you know what these are, I'll furnish you with witnesses for each of them.

[WITNESSES]

[**20**] You see, men of Athens, the unpleasant consequences of the whole business. Well then, even if no unpleasantness emerged from this situation and if it wasn't wholly impossible for us to have the same name, still it isn't fair for him to have a share of my property because of the *adoption* (the *adoption* my father was forced to undertake!) and for me to be robbed of the name he gave me voluntarily and without being forced by anyone. I certainly don't think that's fair. Moreover, so you may know that my

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[56]Cf. Dem. 40.41. For the *graphē xenias* (an indictment against an individual pretending to be a citizen), see Dem. 59.16 and 52.

[57]If an absent litigant sent no one to explain his non-appearance in court or at the arbitration hearing, the case would be decided against him and is called "deserted" (*erēmos*); see below, 39.37–38nn and MacDowell 1978: 248. In the hypothetical case presented here, if Boeotus (under the name "Mantitheus") did not appear in court, no one would be able to attach a face to the name.

[58]The magistracy was the Taxiarch (39.17); see also Dem. 40.34.

father not only registered my name before the phratry members as previous witnesses have testified but also gave me this name in celebration of my tenth day,[59] [*to the secretary*] please take up this additional deposition.

[DEPOSITION]

[21] You hear, men of Athens, that, whereas this fellow was enrolled as "Boeotus" by my father before his phratry mates when he was forced to do so, I have been in possession of this name all my life. I would therefore be delighted to interrogate the defendant in your presence.

[*To Boeotus*] If my father had not died, what would you have done when you appeared before the demesmen? Would you have forbidden him to register you as "Boeotus"? But it's strange to bring a suit to win registration, and then to try to prevent its consequences later on. And yet, if you had let him, he would have registered you before the demesmen by the same name as he had before the phratry. Oh Earth and gods! Isn't it dreadful that he claims Mantias is his father and yet has the audacity to invalidate what he did when he was alive?[60]

[22] He also had the audacity to say the most shameful things in the presence of the arbitrator:[61] that my father celebrated his tenth day just as he did mine and gave him the name "Mantitheus," and then he produced witnesses whom no one had ever seen in my father's company! But I think you all know that no one would have celebrated the tenth day of a child's birth unless he regarded him as his own legitimate son; nor if he had celebrated the day and felt affection—as any man would feel affection for his son—would he later have dared to deny it. **[23]** For even if he had quarreled with their mother, he would not have

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[59]See the Introduction to this volume at n. 32.

[60]Boeotus could not have prevented his father from registering him in the deme since he had died before the occasion arose. The plaintiff deceptively treats the hypothetical scenario as actual.

[61]The plaintiff refers to the official arbitrator who was required to hear the case before it came to court; see the Speech Introduction at nn. 12–13.

hated them—so long as he believed they were his own; it's far more common for a husband and wife who are at odds with one another to be reconciled on account of the children rather than on account of their wrongs to one another to hate their common children as well.[62]

Furthermore, it's not only from this that you can tell he's lying (should he mention these matters), but also from the fact that before he began claiming he was our kinsman, he would go to the tribe Hippothontis to train in the boys' chorus.[63] [**24**] And yet who among you thinks his mother would have sent him to that tribe, if she had been mistreated, as he claims, by my father and knew that he had celebrated the tenth-day feast and later denied it? Surely no one![64] [*To Boeotus*] For it would have been equally possible for you to train in the chorus of the tribe Acamantis—and that tribe would have clearly been consistent with the conferral of the name "Mantitheus." To prove that I'm speaking truly, I shall provide as witnesses his chorus mates who are well informed.

[WITNESSES]

[**25**] Well, the facts are thus well established: by reason of his mother's oath and the naïveté of the man who tendered her that oath, Boeotus obtained a father and has joined the tribe Acamantis instead of Hippothontis. Still, he isn't satisfied but has even lodged two or three suits against me for money[65]—not to men-

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[62]A similar remark appears at 40.29.

[63]Hippothontis is the tribe of his mother's family.

[64]The speaker's reply can be filled out: "Surely no one would have sent him there!" His argument appears to be that if Plangon had really been mistreated because Mantias had first acknowledged Boeotus (by celebrating the tenth day of his birth) and then repudiated him, she would still have sent him to Mantias' tribe (Acamantis) as a sign that Mantias was indeed his father; only if she thought his paternity uncertain (and if Mantias had not celebrated the tenth day) would she have sent him to Hippothontis.

[65]A "lawsuit for money" (*dikē arguriou*) appears to have been a specific remedy for recovering money (Dem. 52.14), but scholars have been unable to define it precisely; see Lipsius 1905–1915: 726 and Harrison 1971: 79 n. 3.

tion the frivolous prosecutions he started up against me earlier.[66] I think you all know, however, what sort of businessman my father was [**26**] and I'll not speak of that.[67] But if their mother has sworn truly, then she proves the defendant's manifest guilt in bringing frivolous suits in these cases: [*to Boeotus*] for if my father was so extravagant as to maintain another woman, the one whose son you are, while having a legitimate marriage with my mother—and thus to have kept two households—how, leading such a life as that, could he have left behind any money at all?

[**27**] Furthermore, I'm well aware, men of Athens, that Boeotus will have nothing honest to say but will nevertheless resort to the arguments he always makes: that my father, under my persuasion, persecuted him terribly and that as the elder son, he has the right to bear the name of his paternal grandfather.[68] You had better hear a brief response to this, for I know that I saw him when he wasn't yet my kinsman, looking at him just as I would at anyone; he was younger than I, by quite a bit, to judge by appearances, though I don't insist on that point (it would be silly to do so). [**28**] But suppose someone asked this Boeotus: "When you decided to join the chorus of the tribe Hippothontis, before you claimed you were my father's son, what name would you have assumed was rightly yours?" Not "Mantitheus"—for you couldn't claim that name, at least not on the grounds that you're older than I am. For how could you claim my grandfather's name then, when you didn't even think you belonged to my tribe? [**29**] And furthermore, men of Athens, no one among you knows our age (for I'll say that I'm older, and he'll say that he is) but you all know how to reckon justice. And how is that? To count these men as the children of my father from the day on which my father *adopted* them as his sons. And he inscribed me as "Mantitheus" in his deme *before* he in-

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[66]For other lawsuits, see Dem. 40.32–33 and 36–37.

[67]For Mantias' lack of achievement in business, see Davies 1971: 367–368.

[68]A tendency to name the eldest son after his paternal grandfather is illustrated here (the names in the three generations are Mantitheus, Mantias, Mantitheus); for another example, see 40.6. This pattern of name rotation, however, is not the only one found in Athens; see Golden 1990: 257–267.

troduced Boeotus to his phratry.[69] So not only by age but also by right would I reasonably bear the name as the prerogative of the elder son.

[30] So much for that. [*To Boeotus*] Now suppose someone should ask you, "Tell me, Boeotus, how is it that you have become a member of the tribe Acamantis and the deme Thoricus and have become the son of Mantias and have a share in the estate he left behind?" Well, the only answer you could give is that "Mantias while alive *acknowledged* me, too."[70] If one should then ask, "What proof or what witness testimony do you have for this?" you would say, "He introduced me to the phratry." Then, if someone were to ask, "Under what name did he register you?" you would answer "Boeotus"—for this is the way you were introduced. [31] Isn't this dreadful, then, that you participate in the civic life of this city and share Mantias' estate by virtue of this name—and yet you think you can give up that name and give yourself another! Come, suppose my father were to rise from the dead and demand that you either keep the name with which he *adopted* you or else claim someone else as your father—wouldn't his request seem reasonable? Well, I'm making the same request: either enroll yourself as the son of another father or else keep the name Mantias gave you!

[32] By Zeus, you will protest, the name was given to you as an insult and an outrage![71] Yet often during the period when my father would not *adopt* them, these men would say that their mother's kinsmen weren't inferior to my father's. Now "Boeotus" is the name of his mother's brother; and since I had already been

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[69] The speaker is waffling on the question of age; although there were no "birth records" in Athens (see Scafuro 1994), the speaker might have called upon witnesses to testify to his birth as being "at the same time as" or "before" or "after" a datable event. Scholars generally think that Boeotus was older; see the Speech Introduction, "The Background" and n. 4. That the older rather than a younger son would bear the name of his paternal grandfather is a forced argument of probability.

[70] For *poieisthai* as "adopt" and "acknowledge," see the Speech Introduction.

[71] See the Speech Introduction, n. 1.

enrolled as "Mantitheus" when my father was compelled to enroll them, he enrolled the defendant thus, as "Boeotus," and his brother as "Pamphilus"—or show me one Athenian who has ever given the same name to two of his children. If you can do that, I'll concede that my father gave you that name as an insult. [33] And yet if your conduct was such as to compel him to *adopt* you but to ignore how to please him, then you didn't behave as a son ought toward his parents, and for that, you would justly have deserved not insults but death. Surely it would be a terrible wrong if the laws protecting parents[72] were to be enforced against children who are recognized by their father of his own accord but are to be null and void against children who compel others to *adopt* them against their will.

[34] Oh, obstinate Boeotus, please put an end to this conduct;[73] but if you refuse, then, in the name of Zeus, at least take this advice: stop making trouble for yourself and stop this frivolous suit against me. Be happy that you now have civic rights, an estate, and a father. No one is depriving you of these—at all events not I. If you act like the brother you claim to be, you'll be treated as part of the family; but if you continue to plot, bring suits, act in jealousy, malign others, then everyone will think that you've forcefully assumed privileges that are not yours and that you use them improperly. [35] Surely I'm not the one in the wrong—even if my father refused to *adopt* you, when you were really and truly his son; for it wasn't my business to know who his sons were, but it was his to show me whom I should consider a brother. During the period when he would not *acknowledge* ("adopt") you, I too refused to consider you kin; but ever since he *adopted* you, I too consider you a kinsman. What's the evidence for this? You have

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[72]Athenians were required by law to care for their parents while alive and give them proper burial when they died. The legal remedy was a public action: an indictment (*graphē*) or denunciation (*eisangelia*). Specific offences that fell under the general rubric of "maltreatment of parents" (*goneōn kakōsis*) are striking parents (Lys. 13.91), failure to honor their graves (Xen. *Memorabilia* 12.2.13), or failure to provide them sustenance (Aes. 1.13; Dem. 24.107) or a house (Aes. 1.13). The penalty was total *atimia* (see 39.14n).

[73]For an address to another brother, see Dem. 45.84–85.

a portion of my father's estate after his death; you enjoy religious rites and civic privileges[74]—no one is taking these away from you. What do you want? [*To the judges*] If he claims he is suffering terribly and if he weeps and wails and accuses me, don't believe a word he says (for it's not right—this case before you now does not concern those charges). Give him this answer: he can just as well get the justice he seeks with the name "Boeotus."

[**36**] [*To Boeotus*] Why then are you so quarrelsome? Don't be. Stop bearing grudges against us. For I don't bear you any: even now—in case you didn't notice—I'm speaking more in your own interest when I ask that we do not have the same name. Indeed, if there were no other reason, so long as there are two Mantitheuses, sons of Mantias, a listener must ask which one is meant. So, if he means you, he'll say, "the one whom he was forced to *adopt*." Why do you want this?

[*To the secretary*] Please take and read these two depositions attesting that my father gave me the name Mantitheus and gave him the name Boeotus.

[DEPOSITIONS]

[**37**] It remains, I think, to show you, men of Athens, not only that you will be true to your oath if you vote as I recommend but also that the defendant already passed judgment against himself, that he should rightly have the name Boeotus and not Mantitheus. For when I brought this suit against "Boeotus son of Mantias of the deme Thoricus," from the beginning he contested it and applied under oath for postponement using the name "Boeotus."[75]

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[74]Participation "in religious rites and civic privileges" (*hiera kai hosia*) is both "the sign and the effect" (Gernet 1957) of belonging to a family; cf. the last sentence of the law quoted in Dem. 43.51.

[75]A litigant who was unable to attend a trial or an official arbitration could apply for a postponement; he would send a relative or friend to swear the oath for postponement (*hypomosia*), saying that the litigant was ill or absent from Attica. His opponent might take a counter-oath, denying the litigant's ill-health or absence (see Dem. 48.25, 58.43). The arbitrator could then give a decision, or, if the case were in court, the judges would vote either to

And in the end, when it was impossible to delay any longer, after he had allowed the arbitrator to decide against him in absentia, consider, in the name of the gods, what he did: [**38**] he moved that the suit be dismissed, designating himself "Boeotus."[76] Yet from the beginning he should have allowed the suit "Against Boeotus" to be completed if indeed the name had nothing to do with him, rather than showing up later and asking that the suit be declared void under that name! When a man has thus given judgment against himself, that he is rightly named Boeotus, what verdict can he ask from you, the sworn judges? To show that I'm telling the truth about this, [*to the secretary*] please take the motion to dismiss and the written charge in this suit.

[MOTION TO DISMISS CHARGE]

[**39**] Well, if he can show you a law that gives children authority over their own names, it would be correct to vote as he now recommends. But if the law—which you all know as well as I do—gives fathers authority not only to confer the name at the outset but also to erase and repudiate it if they desire,[77] and if I have shown that my father, with authority based on the laws, named the defendant Boeotus and me Mantitheus, how can you give any other verdict than the one I recommend? [**40**] Moreover,

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grant the postponement or to give judgment in favor of the litigant who was present (see MacDowell 1978: 248 and Harrison 1971: 155). The speaker of this oration had apparently agreed to the postponement, but Boeotus did not appear on the day assigned for giving a decision.

[76]When an official arbitrator gave a decision against a disputant in absentia, that disputant might apply within ten days to the four tribal judges to have the arbitrator's decision set aside; the disputant had to swear that his absence was unavoidable. The judges who accepted the oath would then declare the hearing "void," and the case would go back to an arbitrator. See MacDowell 1978: 209–210.

[77]This is the only reference in the orators to *apokēruxis*, a public proclamation whereby a father expels a son from his household and disinherits him. Little is known of the procedure, which is mentioned by antiquarians and lexicographers. See Harrison 1968: 75–76.

in cases where there are no laws, you have sworn to render your verdict "according to the most just judgment"[78]—so that even if there were no law established in these matters, it would be just to cast your vote in my favor. Indeed, who among you has given the same name to two of his own children? And who, though not yet a father, will do so in the future? Surely no one! [**41**] So whatever you have decided is, in your judgment, just for your own children—this is your pious duty to decide in our case, too. Therefore, according to the most just judgment and the laws and oaths and admissions of the defendant, my requests are reasonable, men of Athens, and my claims are just, whereas his are not only unreasonable but also without precedent.

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[78]The clause "in cases where there are no laws [I swear] to decide by the most just judgment (*gnōmei tēi dikaiotatēi*)" is thought to be part of the oath sworn annually by the 6,000 judges allotted for that year. It appears in Dem. 20.118 and 23.96. The right of a father to name his son was probably not a matter of written law but of custom; thus, the speaker provides for this.

40. AGAINST BOEOTUS II

INTRODUCTION

For the background to this case, which involves the same litigants as in Oration 39, see the Introduction to that speech. In that case, "Boeotus" won the right to be called Mantitheus, which is also the name of his half-brother.[1] Here Mantitheus son of Mantias is suing Boeotus son of Mantias for the recovery of his mother's dowry from Mantias' estate; Boeotus' younger brother Pamphilus may have been a co-pleader (*synēgoros*) for the defense.[2] After Mantias' death (ca. 358),[3] the three half-brothers had divided the property amongst themselves, but they postponed apportioning the house as that was to be reserved for payment of the dowries once their existence and amounts were determined. Mantitheus' present suit (ca. 347) to recover his mother's dowry had had a "false start" several years earlier (mid 350s?) when Boeotus had countersued him for the recovery of *his* mother's dowry from Mantias' estate. After a failed private arbitration of both suits and a successful official arbitration of Boeotus', an official arbitrator decided Mantitheus' case in his favor, but Boeotus had had

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[1] As in the Introduction and notes to Dem. 39, I designate the defendant in this suit as "Boeotus," even though his lawful name is now "Mantitheus." Dionysius of Halicarnassus *Dinarchus* 13, quotes the title of this speech as "Against Mantitheus, concerning dowry."

[2] Rubinstein 2000: 259 thinks a "team defense" would explain the vacillation of the speaker, who sometimes addresses a single opponent and sometimes a plural.

[3] For the dates given here, see the Introduction to Dem. 39, n. 8.

that decision declared null and void. Mantitheus did not immediately start the suit for the dowry anew, but brought the suit over the name first. Sometime after the conclusion of that trial, Mantitheus brought his half-brother to court once again.

The Dispute in Oration 40

At the time of the present lawsuit, the defendant had lodged a "countersuit" against his half-brother (40.3). The precise nature of neither suit is clear, but certainly the division of Mantias' estate is at the core of each. Mantitheus' suit against Boeotus is often thought to have been brought as a *dikē proikos*, a private remedy for the recovery of dowry, but the case does not neatly fit the rubric. The *dikē proikos* was available "if someone owes a dowry but does not pay it" (*Ath. Pol.* 52.2). More precise rules can be inferred from the orators. We know, for example, that dowry was recoverable from the husband upon a divorce, regardless of which spouse initiated it and probably regardless of the grounds for having done so.[4] We also know that the rules regarding the recovery of a dowry upon the death of one spouse or the other differed, depending on whether the marriage produced children, and, in the case of a widow with children, whether she chose to remain in the house of her deceased husband. If a woman died before her husband and there were no children, then the dowry was to be returned to the deceased wife's former *kyrios* (usually her father or brothers who acted as legal guardian[s]).[5] If there were legiti-

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[4]Is. 3.35; Dem. 27.17, 59.52. The view that a woman's adultery could have been used as grounds for the husband's retention of the dowry has been advanced on the basis of Dem. 40: Plangon, it is argued, having been married with a dowry to Mantias, was divorced by him for adultery, and he retained the dowry. Harrison 1968: 55, arguing against this view, points out that even if "there had been a divorce for this reason, and, if this was indeed why Mantias had retained the dowry, why did not Mantitheus say so?"

[5]Is. 3.36 and 38. Conversely, if a husband died and there were no legitimate children, then the widow returned to her *kyrios*, who in consequence would seek the dowry from the deceased husband's heirs (Is. 3.8–9, 78, 8.8). If there were legitimate children or if his wife were pregnant at the time of

mate children and they had reached majority, then the dowry was to be transferred to them (presumably from the widowed father); if they were minors, their father managed the dowry until they came of age.[6]

In each of these "post-mortem instances," the dowry is recoverable from the individual (the widower/father) who withholds it. But this case is different: there is no father or widower who can be sued for the dowry; it is recoverable only from the estate, that is, from the heirs, one of whom (Mantitheus) is himself the plaintiff.[7] Gernet has speculated what other legal remedies may have been used, but there is scarcely anything known about them. All we can say is that there are sufficient grounds to doubt that this suit "about the dowry" was brought by a *dikē proikos*.

Mantitheus lavishes nearly a third of the oration on the background of the case (40.1–18), a tale of woe that aims to demonstrate that his mother had been given in marriage with a dowry of a talent; he produces witnesses to support his claims, and he also has the secretary read out the law about dowry in 40.19. He then turns to the arguments of Boeotus (40.20–25) and maintains that

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his death, then the widow had a choice: she could remain in her deceased husband's house, in which case the children or their guardians retained the dowry (42.27, 43.75) or she could return to her natal family, who could then recover the dowry, using a *dikē proikos* if necessary. The three daughters and son of Cleomedon appear to have remained in Cleomedon's house after his death, while his wife, the mother of the speaker, left with her dowry and married Mantias (40.6).

[6]This was the case of the Mantitheus who is the plaintiff in this case. See 40.50: after his mother's death, he remained in his father's house, and the interest from his mother's dowry was used to maintain him. On the other hand, Mantitheus may have been lucky: minors might suffer if their fathers refused them maintenance from the dowries; the legal remedy for such conduct is not known; possibly a maternal kinsman could prosecute such a father with a *graphē hybreōs* (a public indictment for outrage).

[7]Gernet 1957: 30–31. Another objection to classifying this as a *dikē proikos* is that in *Ath. Pol.* 52.2, this is said to be a "monthly suit," and so it would not make use of an official arbitrator as the suit in Oration 40 does. The jurisdiction of the *dikē proikos*, however, may have been different at the time our speech was composed.

the latter's claim, that Mantias had appropriated surplus money from the confiscated estate of Boeotus' grandfather Pamphilus,[8] is improbable, and consequently, Boeotus' mother had no dowry. Moreover, Boeotus' claim that the speaker's mother was dowerless is also improbable, given that she was first married to the son of Cleon and her sister was the wife of Chabrias, both famous and respectable Athenians.[9] He then offers other arguments based on probability, belittles the number of witnesses provided by Boeotus (which on the speaker's account are few indeed), brings up a hotchpotch of complaints against Boeotus (e.g., that he contrived a lawsuit for wounding with intent to kill against him, that he took advantage of bearing the same name as the speaker by claiming that a courtroom judgment given against him was in fact against the speaker), and argues against a claim that he himself had pocketed a debt owed his father from the people of Mytilene (40.26–38).

Mantitheus next furnishes a rather extended argument (40.39–44) designed to check the effect of a challenge offered by Boeotus (and refused by the speaker) to submit all their disputes to a private arbitrator:[10] a man who has thrice appeared before an arbitrator (the speaker argues), who has presented arguments in his presence, and who agreed to abide by adverse decisions cannot reopen those settled disputes; and surely a man whose gateway to citizenship was opened by an arbitrator will not want to undo the effects of their decisions. Mantitheus has no doubt misrepresented Boeotus' challenge, but he is preparing the way for presenting the one he had made as a counter to his half-brother's (likewise refused). The courtroom strategy of a litigant's presenting a challenge in response to an opponent's challenge appears elsewhere in this volume and is common in forensic speeches.[11] The amount of

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[8] See the Introduction to Dem. 39, n. 5.

[9] For Cleon and his son, see 40.6n and 25n; for Chabrias, see 40.24n.

[10] See 40.10n for the way a challenge worked.

[11] A challenge (e.g., to exchange property) can be used to settle a dispute between two citizens in which one of them, having been appointed to bear a state expenditure, thinks the other should bear the expense because he is richer; for details, see the Introduction to Dem. 42. Three speeches from

space Mantitheus devotes to the argument here suggests the potentially powerful (even if only rhetorical) effect upon a courtroom of judges of the refusal of a challenge.

Mantitheus then turns to a final round of smears (40.45–52) against his half-brother and his family (Boeotus, he says, slanders his dead father, his mother was a financial drain on his father); he himself, on the other hand, has contributed heftily to the estate's maintenance and to his father's burial. Mantitheus ends (40.53–61) with a warning to the judges to be on their guard against Boeotus' tricks (he will not use witnesses but will resort to saying "you all know"), then adds a special plea for his own claim ("without success I'll be unable to dower my daughter"), and just when another (better) speaker might have called it quits, he takes a detour, appending a rejoinder to Boeotus' claim that he has sold his third of the house to a man named Crito. Finally, he makes his farewell, begging the judges for their help against the men who are trying to rob him of his house, which had been set aside for the recovery of the dowry, pending the court's decision.

Authorship of the Speech

Dionysius of Halicarnassus (*Dinarchus* 13) includes both Speeches 39 and 40 among spurious works assigned to Dinarchus. He points out, however, that Dinarchus could not, on chronological grounds, have written 39. He then remarks that 40 has many stylistic features "that could belong to the same author" (i.e., Demosthenes) and refers the reader to his more detailed discussion of the two speeches in a part of his essay on Demosthenes, which does not survive. Some modern scholars have doubted Demosthenes' authorship of the second speech, arguing that, although its writer clearly had access to the speech about the name (as is evident from the parallel passages, e.g., 39.3–4 and 40.9–11), a lack of focus in its argumentation as well as changes in style and characterization (e.g., the Mantitheus of this oration is far more prone to

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two lawsuits for giving false testimony about a challenge appear in this volume (45, 46, and 47).

seeing himself as a passive victim of events) indicate that the author was not Demosthenes.[12] This view is subjective and not demonstrable but is nevertheless plausible.

40. AGAINST BOEOTUS II, CONCERNING A MOTHER'S DOWRY

[1] It is most exasperating, judges, for a man to be called "brother" of certain individuals when he in fact regards them as enemies and is forced, after suffering many awful experiences at their hands, to enter court, as now has happened to me. [2] Not only was it my misfortune at the outset that Plangon, the mother of these men, tricked my father with a patently false oath and so compelled him to agree to *adopt* them[13]—a trick that cost me two-thirds of my inheritance—in addition, I've been driven out of the ancestral home where I was born and raised and into which I (not my father for he had died) received these men, [3] and I'm also being robbed of my mother's dowry, which is the subject of the suit now underway.

For my part, although I have given my opponents satisfaction for all the claims they have brought against me (except for one or two which they maliciously filed as a response to this present suit,[14] as you'll soon discover), they have not, in the course of eleven years, provided me any reasonable redress; but now I have recourse to you. [4] Accordingly, I ask all of you, oh judges, to give a favorable hearing to my speech—I shall try my best—and, if you think I have suffered terribly, to have sympathy for me since I'm trying to recover my own property, with the special aim of providing a dowry for my daughter. Yes, *my* daughter, for it was my lot to marry, at my father's bidding, when I was only eighteen; and my daughter is already of marriageable age.[15]

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[12]Gernet 1957: 31; Blass 1893: 512–513; Schaefer 1858: 225–226.

[13]For the translation of *poieisthai* as "adopt" (and sometimes as "acknowledge"), see the Introduction to Dem. 39 at nn. 19–23.

[14]One of Boeotus' countersuits is mentioned in 40.37.

[15]No minimum age of marriage seems to have been fixed by law; nonetheless, the age of eighteen for a man's marriage is unusually young (see

[5] So there are many reasons why you would be acting justly in helping me, the injured party, and why you would reasonably be angry with my opponents, men who—Heaven and Earth!—although they had the opportunity to act justly and avoid coming into court, are not too shameless to remind you of any impropriety in my father's conduct or any of their own wrongs against him, and even compel me to sue them. That you may know for certain that I'm not to blame for this but they are, I'll tell what happened from the beginning as briefly as I can.

[6] My mother, oh judges, was the daughter of Polyaratus from the deme Cholargus; she was the sister of Menexenus, Bathyllus, and Periander. Her father gave her in marriage to Cleomedon the son of Cleon,[16] with a talent as her dowry. This was her first marriage. After the birth of three daughters and a son named Cleon,[17] her husband died, and she left that household, taking the dowry with her.[18] [7] Her brothers Menexenus and Bathyllus (Periander, you see, was still a child) then gave her away in marriage once again and dowered her with the same talent.[19] And so she was married to my father. I am their son and so, too, is a

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Humphreys 1989: 183 n. 8); on the other hand, the age of thirty or thirty-five, often cited as the usual or ideal marriage age for men, may be too high (see Golden 1990: 212 n. 82). Women seem to have married in their early teens; second marriages seem to have been frequent.

[16]Cleon was a famous Athenian general and political leader (see 40.25) who was criticized by Thucydides and satirized by Aristophanes.

[17]Observe the common pattern of name-giving here: grandfather (Cleon), father (Cleomedon), grandson (Cleon) and cf. 39.27n.

[18]For the circumstances under which dowry was lawfully recoverable, see the Introduction to this speech at nn. 4–6. It seems that it was customary to give the second husband the same dowry as the first; exceptions to this "custom" appear at Is. 8.8 and Dem. 41.27–29; see Schaps 1979: 81–82, 145 n. 77.

[19]Presumably Polyaratus was dead. After the death of a father, sons have the right to give their sister away in marriage; see the Introduction to this volume, I. The details about the two marriages of the speaker's mother, that she was given away by her father and brothers and that she was dowered, show that her marriages and any children born from them were legitimate.

younger brother who died in childhood. To testify to the truth of my statements, I'll provide witnesses before I continue.

[WITNESSES]

[8] My father, then, wed my mother in this way, and he maintained her as his wife in his house; and he raised me and loved me just as you, too, love your own children. As for Plangon, the mother of these men, well, my father did have some sort of relationship with her; [*the speaker pauses*] but it's none of my business to discuss that.[20] [9] Nevertheless, he wasn't so completely ruled by passion to think it right, after my mother died, to welcome Plangon into his house—nor to be persuaded that these men were his sons. No, during this period they didn't live as sons of my father, as indeed most of you know; but when this man grew up, he procured the aid of that factory of extortionists led by Mnesicles and Menecles—the one who won the conviction of Ninus—with their help, he sued my father, claiming he was his son.[21] [10] They held many meetings on that matter,[22] but my father insisted that he could not be persuaded that they were born from him; finally, Plangon—judges, the whole truth will be told you—trapped my father with Menecles' help and deceived him with an oath, that most powerful and awesome device among mankind.[23] She agreed, for the price of thirty minas,[24] to give her sons to her brothers for adoption[25] and then, if my father were to challenge her before the arbitrator to swear an oath that they were indeed

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[20]The speaker's reticence about the affair is similar to that of the speaker at Dem. 45.27.

[21]Cf. Dem. 39.2, where the same events are related.

[22]These were meetings (*synodoi*) in the presence of the official arbitrator before the case would go to court (which in this instance did not happen).

[23]A quotation from *Iliad* 15.37–38.

[24]One of the few instances in the Attic orators of an Athenian woman acquiring property.

[25]The term for adoption here is *eispoiein*. Adoption would involve some of the same procedures as followed when registering a natural-born son in phratry and deme; see the Introduction to this volume, III.

his sons, to refuse the challenge.[26] If these conditions were met, her sons would neither lose their civic rights nor be able to make trouble for my father any longer—since their mother had rejected the oath.[27] [11] After this agreement had been made—why should I lengthen the story? Plangon appeared before the arbitrator and violated all the terms; she accepted the challenge and swore in the Delphinion[28] an oath exactly the opposite to the earlier one, as most of you know since the affair was much bruited about.[29] And

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[26]A "challenge" was a formal procedure, perhaps validated by custom rather than by law, by which a disputant "challenged" his opponent to provide information (see Introduction to Dem. 45 at nn. 23–24) or to settle a dispute in one way or another (e.g., by accepting as decisive an arbitrator's verdict or information provided under a sworn oath or from the interrogation of a slave under torture). Here the challenge to take the oath is made during the official arbitration; Plangon's oath was undoubtedly the decisive factor for the arbitrator's verdict (see 40.44n).

[27]For the connection between citizenship and paternity, see the Introduction to this volume, III. According to the plaintiff, Plangon planned to have her brothers adopt her two sons. Adoption, however, would entail the acceptance of the young men by the deme of Plangon's brothers, and their parentage would still require testimony. Michael Gagarin has pointed out to me that if Plangon had rejected the challenge during the arbitration, she might still have made an assertion or sworn an oath that Mantias was the father of the boys on another occasion to facilitate their adoption. Thus, the speaker is correct: had Plangon followed the alleged plan, her sons' access to civic rights would not have been blocked, even though it may have been made more difficult.

[28]A sanctuary shared by Apollo Delphinios and Artemis Delphinia. On a proposed location of the city Delphinion near the Olympieion, see Boegehold 1995: 135–136. As there were local Delphinia both in Thorikos (the deme of the "defendant" Mantias) and in Herchia (the deme of the defendant in Is. 12), it is conceivable that the meetings mentioned in these speeches took place in the demes of the defendants rather than in the city. For the local Delphinia, see Lambert 2000: 76.

[29]The adjective *periboētos* ("much bruited about") may, as Humphreys (1989: 183–184) suggests, be a pun. Plangon's oath was apparently well known in the fourth century: Aristotle cites it as an *exemplum* at *Rhetoric* 2.1398b2.

so my father, under compulsion to abide by the arbitrator's decision because of his own challenge,[30] was annoyed at what had happened and found it hard to bear and even so did not agree to admit them into his house but was compelled to introduce them to his *phrateres*. So he enrolled the defendant as "Boeotus" and his brother as "Pamphilus."[31]

[12] Immediately after that, my father kept urging me, although I was only eighteen, to marry the daughter of Euphemus; he wanted to see children born to me. As for me, oh judges, because I believed—not only before this but especially now when these men were harassing him with lawsuits and causing trouble—that I, unlike them, ought to cheer my father by doing everything in my power for his happiness, I obeyed him. **[13]** And after I married in this way, my father, having lived to see a little girl born to me, with the passage of a few more years, became ill and died.

Judges, during my father's lifetime, I thought I should obey him in all matters, but after his death I admitted these men into the house and I gave them a share of everything—not because I thought they really were my brothers (for how they have become so cannot have eluded most of you) but in the belief that I was compelled to obey your laws once my father had been deceived.

[14] After these men had been admitted into the house in this way, we began dividing up the estate. When I insisted on the return of my mother's dowry, they put in a counterclaim, saying that an equal dowry was owed for their mother.[32] On the advice

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[30]For the "compulsion" upon Mantias to abide by the official arbitrator's decision, see 39.3n.

[31]The episode of Plangon's oath here (40.10–11) was given more summary treatment in 39.3–4. There, the alleged enrollment of her son as "Boeotus" in the phratry played a more significant role. Here, the extended account is meant to color the character of Plangon: she is deceitful and not to be trusted. Her "compelling" of Mantias to acknowledge Boeotus suggests he was illegitimate, possibly the offspring of an adulterous relationship.

[32]According to the speaker, Boeotus and his brother in the earlier lawsuit had claimed "an equal amount of dowry," which would mean a talent (or 6,000 drachmas, 40.6–7); later (40.20), the speaker reports that in

of men who were present, we distributed all the other property, but the house and my father's household servants we set apart; [15] in this way, if the dowry should really be owed to one of us, he might recover it from the house and also, if these men should make a search for any of my father's goods, they might make inquiries of the slaves (who were common property) either by torture or by investigating in any other way they would like. You will know from these depositions that I'm speaking truly.

[DEPOSITIONS]

[16] After this, they brought suits[33] against me to recover their claims, and I, too, sued them regarding my mother's dowry. At first we arranged for Solon of the deme Herchia to serve as arbitrator, and we referred our claims against one another to him.[34] My opponents did not appear but avoided the meetings altogether, and much time was wasted. Then it happened that Solon died, and they lodged their suits against me all over again, and I did the same against this fellow, summoning him and having the name "Boeotus" written in the charge, for this was the name my father gave him.

[17] As for the matters about which they were suing me, when

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the current lawsuit Boeotus will try to show that their mother's dowry was "more than a hundred minas" (= 10,000 drachmas). The discrepancy has troubled commentators, perhaps without reason; see 40.20n.

[33]The reference to lawsuits (plural) here and later in the section is unclear, since the official arbitrator appears to decide only one case for them (40.17). Possible explanations: (1) the plural is used carelessly (referring to one lawsuit in which two opponents are involved); (2) the speaker wants the judges to think his opponents are even more litigious than they are; (3) the plural for singular is acceptable idiom; or (4) both Pamphilus and Boeotus brought separate cases and Mantitheus is not giving a full account. The second explanation may be right, but all are possible.

[34]Solon is acting as a private rather than official arbitrator. Some scholars see evidence in this passage for an institutionalized process by which a case is removed from the official arbitration procedure and put into the hands of a private arbitrator selected by the agreement of the disputants.

my opponent appeared and argued his case and couldn't prove any of their charges, the official arbitrator pronounced in my favor. And my opponent, aware that his suit had no just basis, neither appealed the arbitrator's decision to the court[35] nor has he filed any suit against me concerning these matters—but over other matters, yes, hoping to destroy my current suit with these claims. But in the suit over the dowry that I was pursuing against him then, since he was here in Athens at the time and he didn't appear before the arbitrator, he lost the case by default. [**18**] And so, judges, he neither contested the case at the time—although he was in town—nor did he admit that I had won the arbitrator's verdict against him; for his name, he said, was not "Boeotus" but "Mantitheus." Thus, by contesting a name he is in fact robbing me of my mother's dowry.[36] Perplexed at what a person should do under these circumstances, I again lodged the same suit against him under the name Mantitheus, and now, in the eleventh year I have come to you for assistance.[37] The secretary will read you the depositions about these matters to prove that I'm telling the truth.

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[35]The speaker repeats the same information in 40.31, 39, and 42. The decision of the official arbitrator is not final, unless both parties agree to it (*Ath. Pol.* 53.2). See the Introduction to Dem. 39 at nn. 12–13. Since Boeotus did not appeal the case, his lawsuit against Mantitheus is finished; he is not permitted by law to reopen it. It was not uncommon, however, for a litigant to file suit on a separate but related matter, as Boeotus does here, so that the same issues would, in effect, be tried again.

[36]This is an abbreviated (and tendentious) way of saying that Boeotus had the arbitrator's verdict rendered void (see 39.38n) in the case that Mantitheus had brought against him under the name "Boeotus." Apparently, Mantitheus refused (at least in the immediate aftermath of the arbitration) to reinitiate the lawsuit for recovering his mother's dowry against his half-brother, perhaps because he could not tolerate bringing a suit against a man named "Mantitheus." In the interim, he sued Boeotus about the name.

[37]Presumably, this is not the eleventh year from the original suits for the recovery of dowry but rather the eleventh year since Mantias' death; the "eleven-year" period is also mentioned in 40.3 and 43.

[DEPOSITIONS]

[19] You now know, judges, that my mother, in accordance with the laws,[38] was given in marriage by her brothers with a talent as her dowry and lived with my father as his wife. You also know how I admitted these men into the house after my father's death and that I was acquitted of the charges they brought against me.[39] Witnesses have testified to all these points, and they are clearly proven. [*To the secretary*] Come now, read also the law about dowry.

[LAW]

[20] Well, seeing the way the law is worded,[40] I think Boeotus—or Mantitheus—or whatever name he likes to be called, won't have any just or true defense to make, but will rely on his recklessness and boldness and try to shift his family's misfortunes onto my shoulders—just as he usually does in his private life as well. He will claim that when the property of Plangon's father, Pamphilus, had been confiscated by the city, my own father took the surplus money from the Councilors' Hall [*bouleuterion*];[41] this is how he will try to prove that his mother brought with her a dowry of more than a hundred minas, while my mother, so he will

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[38]The "laws" mentioned here probably specified who could give a woman (or perhaps a widow) in marriage (such a law is cited at Dem. 46.18). Mantitheus will cite the laws to show that his mother's second marriage was fully legal.

[39]He refers to the suit that Boeotus had brought against him to recover Plangon's dowry.

[40]For laws regarding the recovery of a dowry, see also Dem. 27.17, 42.27, 59.52; and Is. 3.35.

[41]That is, the money that remained after Pamphilus' estate had been sold and the debt had been paid. A scholiast (Aristoph. *Wealth* 174) reports that Pamphilus was condemned for theft of public funds and became a state debtor when he did not pay the penalty. For the procedure of selling a debtor's property, see *Ath. Pol.* 47.2–48 and Lys. 17, 18, and 19.

claim, married my father without a dowry.[42] [**21**] He will dwell on these matters in detail, judges, although he has neither submitted a single piece of testimony about them nor is he ignorant that he's making a false statement; indeed, he knows very well that no one who admits his wrongdoing before you has ever been acquitted, whereas by lying and making misleading claims, many men in the past have escaped with impunity. Therefore, to prevent his deceiving you, I think it's better to speak to you briefly on this point as well.

[**22**] If he claims that my mother did not have a dowry but that their mother did, be aware that he's clearly lying. In the first place, Pamphilus, his mother's father, died owing five talents to the Treasury; and as for money left over after the property had been inventoried and confiscated—far from there having been any surplus for his children, even the full amount of debt has not been discharged on his account, but to this day Pamphilus is still listed as a debtor to the Treasury.[43] How then could my father have taken money from Pamphilus' estate when it wasn't even sufficient to cover his debt to the city? [**23**] Second, judges, reflect that if this money really had been left over, as they claim, my father wouldn't have taken it, but Pamphilus' sons, Boeotus, Hedylus, and Euthydemus would have—men who doubtless would not stop short of anything when pocketing the money of others (as

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[42]The alleged amount of Plangon's dowry is higher here that the one that Boeotus had claimed in his earlier suit against Mantitheus (40.14). Since that earlier suit had been settled against Boeotus (see 40.17n), if Mantitheus is truthful in reporting that Boeotus presented no testimony regarding the sum, then it may be that Boeotus plans, in his defense, to try to deceive the judges into thinking that it is unfair for him to pay a talent from his father's estate for the dowry of Mantitheus' mother when his step-brother owes him more.

[43]If Mantitheus' claim that proceeds from the estate did not cover the debt is true, then Boeotus as a state debtor (and hence an *atimos*, without legal rights) could not appear in court as plaintiff or defendant; either it was permissible for an *atimos* to employ a co-pleader to address the court or else Mantitheus is prevaricating.

indeed you all know) and then look the other way while my father carried off their property!

[24] Well then, I think you have sufficient proof that their mother did not have a dowry and that they are lying about it; and I'll easily prove that my mother did have one. First, she was a daughter of Polyaratus, a man who was honored by you and had a great deal of property. Second, witnesses have testified to you that her sister also had a dowry of the same amount when she married Eryximachus, the brother-in-law of Chabrias.[44] [25] In addition, it's well known that my mother was first married to Cleomedon, whose father, Cleon, we are told, while commanding your ancestors, took a great many Spartan prisoners on Pylos and was the most famous man in the city.[45] Thus, it neither would have been appropriate for the son of that distinguished man to marry my mother without a dowry nor is it likely that her brothers Menexenus and Bathyllus, who possessed a great deal of property themselves and recovered the dowry when Cleomedon died, would have robbed their own sister; rather, they would themselves have increased her dowry when they gave her in marriage to my father, as they and others have testified.

[26] And apart from these considerations, ask yourselves: if indeed my mother had not been betrothed to him and had not brought a dowry but their mother had brought one, why in the world would my father have denied that they were his sons and, instead, have *acknowledged* and raised me? Because, by Zeus, they will say, it was to gratify my mother and myself that he brought dishonor on them. [27] But my mother died when I was a small child, while their mother Plangon, who was a fine-looking woman, maintained a relationship with my father both before and after this—so that he was far more likely to dishonor the son of the dead woman for the sake of the living woman whom he

[44]Chabrias (420–357/6) of Athens served as general at least thirteen times; as a professional soldier, he served the kings of Cyprus and Egypt. Eryximachus is otherwise unknown.

[45]Thucydides (4.27–41) narrates Cleon's exploits at Pylos in 425 BC.

loved passionately than to refuse, for my sake and the dead woman's, to *adopt* the sons of the woman who was alive and who had an ongoing relationship with him! [**28**] And yet my opponent has the audacity to claim that my father celebrated his tenth day of birth![46] And for this event he has submitted only the depositions of Timocrates and Promachus, men who, so far from being my father's kinsmen, weren't even friends with him! Their testimony is so obviously false that my father, the man whom, as you all know, this fellow sued and compelled against his will to *adopt* him—this is the one whom these men—being just two as if they were witnesses to a summons[47]—attest as having celebrated the tenth day of birth in his honor! [**29**] Who among you would believe them? Really, he can't even claim that as a child my father *adopted* him but when he grew older he dishonored him because he was angry with their mother! Surely it's far more common for a husband and wife who have serious differences with one another to become reconciled on account of the children rather than on account of their mutual anger to hate their common offspring as well.[48] So, if he tries to say this, don't allow him to act so shamelessly.

[**30**] And if he should speak about the suits that the arbitrator decided in my favor[49] and claim that I caught him unprepared—remind him, first of all, that the time he had for preparing the case was not brief but many years, and second, that he was the plaintiff—so that he was far more likely to have caught me unprepared than to have been so caught by me! [**31**] Furthermore, everyone who attended the arbitrator's hearing has testified that,

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[46]See the Introduction to this volume, III.

[47]In the fourth century, it seems that two witnesses were required to accompany a person who delivered a summons; see *Hesperia* 4 (1935) 15, no. 1.5. = *Agora* 19 P 5.15. Many more relatives would normally be present at a tenth-day celebration.

[48]The passage is almost identical with 39.23.

[49]The plural is at first deceptive since Mantitheus in 40.30–31 is referring only to Boeotus' suit against him for the recovery of Plangon's dowry, but later he will obliquely refer to other suits (see 40.39, "three times in cases where the arbitrator has decided in my favor" and notes ad loc.).

although he was present when the arbitrator decided in my favor, he didn't appeal the decision to the court but accepted the arbitration. And yet it strikes me as odd that while others who think they are being treated unfairly appeal even very minor cases to you, this man, who lodged a suit against me for a dowry worth a talent, accepted the arbitrator's decision that had been given against him "unjustly" (so he claims). [**32**] "By Zeus! Of course he agreed—he's a retiring individual, no lover of the courtroom!" I could indeed wish, oh judges, he were that sort of man. But as it is, unlike you who cherish the communal good and are so humane that you even refused to banish the sons of the Thirty from the city,[50] my opponent plotted against me together with Menecles, the architect of all this trouble. He started with disputes and taunts, then brought blows upon himself,[51] made a cut upon his own head, and summoned *me* before the Areopagus on a charge of wounding with intent to kill—hoping to banish me from the city![52] [**33**] And had not Euthydicus, the doctor whom they had first approached and begged to make the cut on his head, told the whole truth to the Council of Areopagus, this man would have imposed on me, despite my innocence, a penalty that you wouldn't even try to impose on those guilty of the gravest wrongs. [*To the secretary*] Now please read the depositions so I'll not appear to be misrepresenting my opponent.

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[50]The Thirty were Athenian citizens installed as a ruling board with Spartan support in the summer of 404 after Athens' defeat in the Peloponnesian War. They ruled for about eight months until being replaced by a new oligarchic board, the Ten; the latter was overthrown with the restoration of the democracy in the autumn of 403. For the "Reconciliation," see 40.46n.

[51]Other translations are possible: e.g., "having contrived a quarrel that should end in blows" or "having invented a story about blows having been given in consequence of a quarrel" (see Paley and Sandys 1896: 225).

[52]The Council of Areopagus heard cases of intentional homicide and intentional wounding (*Ath. Pol.* 57.3); Lys. 3 and 4 are examples of the latter. For the penalty, see Lys. 3.38. See also Aes. 2.93 and 3.51 for a similar accusation against Demosthenes.

[DEPOSITIONS]

[34] Well, so serious and terrifying a trial was not the work of a simple-minded fellow but of a plotting and conspiratorial criminal. And later on, after my father died, instead of the name "Boeotus" that my father had conferred upon him—as witnesses have also told you—he registered his name before the demesmen as "Mantitheus," using the same name as I have, as well as the name of my father and deme. As a result, he not only caused this case to be retried,[53] but when you elected me as Taxiarch, he presented himself to the court to undergo the scrutiny,[54] and when he incurred a fine in an ejectment suit, he claimed it wasn't he who incurred it, but I![55] [35] In a nutshell: by causing so much trouble, he compelled me to sue him about the name, not that I might enrich myself at his expense,[56] judges, but, if it should seem to you that I was suffering terribly and incurring substantial damage, that he may go on being called "Boeotus" as my father named him. [*To the secretary*] That I'm now as before telling the truth, please take up the relevant depositions.

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[53]Athenians permitted retrial in very few circumstances, and the speaker is stretching the meaning of the term *anadikos* (lit., "tried over again") to make Boeotus' conduct appear unlawful; see 40.17–18nn regarding the earlier hearings before the official arbitrator. The current suit is not a "retrial" because the arbitrator's decision in the earlier case brought by Mantitheus was nullified. Thus, this is a brand-new case. On the other hand, Boeotus is doing a splendid job of manipulating the court system so as to wear out his opponent.

[54]All citizens who had been appointed to a magistracy had to undergo a "scrutiny" (*dokimasia*) of their qualifications before entering office, usually before the court. Scrutinies for the Council of Five Hundred and the nine Archons were first held before the Council of Five Hundred and then before the court. On the office of Taxiarch, see Dem. 39.17n.

[55]See Dem. 39.15n.

[56]The speaker means that he did not bring the earlier suit merely to collect a monetary compensation for all the mishaps he suffered due to the name but to establish Boeotus' proper name for the future. In fact, the complaint about the name is irrelevant to the present case.

[DEPOSITIONS]

[**36**] In addition, when I was serving in the army and had enlisted mercenaries with Ameinias[57] (for I had been well funded from other sources and had obtained 300 Phocaean staters[58] from Mytilene, from your *proxenos*[59] Apollonides, and from friends of the city), because I spent money on the troops so that a mission could be carried out that was beneficial both to you and to them, [**37**] he actually sues me on this score, claiming that I had recovered a debt owed to my father from the city of the Mytilenians. In doing this, he is serving the interests of Cammys[60] the tyrant of Mytilene, who is your public enemy and mine personally. [*To Boeotus and Pamphilus*] I'll furnish the testimony of your friends to prove that our father himself immediately took the reward the Mytilenians voted him and that no debt was owed to him in Mytilene.

[DEPOSITION]

[**38**] Well, judges, I could mention many other terrible wrongs that my opponent has committed both against me and against

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[57]Ameinias is a common name; the individual cannot be identified. I am indebted to Kennedy's interpretation and translation here.

[58]Thirty staters equal one talent; three hundred staters (10 talents) is a large sum of money. Phocaean staters were made of electrum and were of purer gold than other Greek coins and so quite valuable. *IG* XII.2.1 = Tod 112, from the late fifth century, contains the end of an agreement by which Mytilene and Phocaea were to mint electrum coins of identical weight in alternate years.

[59]A citizen of *Polis X* became *proxenos* ("official friend") of *Polis Y* by decree of *Polis Y* (often for honorary purposes); the *proxenos* would then represent the interests of residents of *Polis Y* in his own *Polis X*. See Todd 1993: 325–326. Here, Apollonides is a Mytilenian whom the Athenians have made their *proxenos* to represent Athenian interests in Mytilene.

[60]Cammys is known only from this passage. Mytilene, no longer a democracy in 351, was restored to the protection and alliance of Athens in 347/6; see Rhodes 2006: 241 and *IG* II^2 211.

some of you, but I'm constrained to pass them over because little time is left.[61] But I think that even on the basis of these arguments, it has been sufficiently demonstrated that a man who contrives a suit against me in which the penalty is exile and sues me on irrelevant charges is not a man to appear before the arbitrator "unprepared." So, if he should try to speak about that earlier arbitration,[62] I don't think you'll buy it.

[**39**] And if he should say that he thought all the matters in dispute should be referred to Conon the son of Timotheus[63] but I refused to do so, be aware that he's trying to deceive you. I was ready to submit to Conon and to any other impartial arbitrator of his choice those matters that had not yet been finally decided.[64] But in the three cases where the arbitrator decided in my favor with this man present before him to argue his side of the case and where he agreed to abide by that decision, as indeed witnesses have testified, I didn't think it right for these cases to be re-

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[61] Lit., "because little water is left for me." For the *klepsydra* (water clock), see the Introduction to this volume, n. 45, and the Introduction to Dem. 46, n. 1, for time allowances in private cases.

[62] Mantitheus refers once again to Boeotus' suit for the recovery of dowry. See 40.30, where he first mentions the excuse of being unprepared, and for "lack of preparation" as a motive for postponing a hearing or as an explanation of defeat, see, e.g., 43.47 and 48.24.

[63] Conon the son of Timotheus (*APF* 8708 and 13700) was grandson of the famous politician and General; his father is the defendant against whom Speech 49 is directed. Conon's career (Davies 1971: 511) "consists almost entirely of a remarkable liturgical record."

[64] Mantitheus represents Boeotus as offering to refer "all the matters in dispute" to a private arbitrator, but he probably is trying to mislead the judges about Boeotus' offer, which may have been to refer only the *current* countersuits to an arbitrator. If Boeotus' offer was a formal challenge, he may have intended to have it read in court during his speech. In 40.44, Mantitheus has his own challenge to Boeotus read to the court. This challenge may have differed from Boeotus' offer only in requiring Boeotus to accept the official arbitrator's decision in favor of Mantitheus in the latter's earlier suit to recover his mother's dowry (despite Boeotus having had the decision nullified). Of course Boeotus would refuse! See 40.10n regarding challenges.

opened.[65] [40] No, indeed—for how could there ever be a final resolution if I annulled the lawful decision of the official arbitrator and referred the same charges to a different [i.e., private] arbitrator—especially as I know for certain that even if other men think it's not fair to rely on arbitration decisions, still, it was especially just to deal thus with this man?[66] [41] Come now, suppose someone were to indict him for pretending to be a citizen,[67] alleging that my father denied on oath that he was his son, could he rely on any other argument against the charge than this: that because his mother had sworn an oath and the arbitrator had decided against him, my father was compelled to abide by the decision?[68] [42] Isn't it terrible, then, if this man, who himself became your fellow citizen by an official arbitrator's decision and received a share of my inheritance and was treated fairly in all matters, should be thought by you to make a just claim when he demands that those suits be retried in which I was acquitted while he was present and had argued his side of the case and agreed to the decisions of the arbitrators? Why, he might as well say that whenever the advantage is on his side, then the arbitrators' decisions must be valid, but when the advantage is not, then his opinion should

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[65]Mantitheus has reported *two* cases in this speech where the arbitrator decided in his favor and where Boeotus agreed (the second time, vaguely): (1) in Boeotus' suit to recover his mother's dowry (40.17) and (2) in the earlier case that Mantitheus had brought against Boeotus to recover his mother's dowry (40.30–31). It is possible, as Paley 1896 suggests, that the third case was the one before Xenippus mentioned in 40.44. In the present lawsuit, it seems that the arbitrator may also have given a decision in favor of Mantitheus; see 40.55n.

[66]A remarkable statement: no other speaker in the surviving speeches praises the efficacy of official arbitrators as much as this one—naturally, since he has been given favorable decisions. At the same time, however, he reports the common view that the decisions of official arbitrators should be ignored, a point often made by litigants when the decision went against them.

[67]For a similarly hypothetical *graphē xenias* (indictment for pretending to be a citizen), cf. Dem. 39.18.

[68]See 40.9–11.

carry greater authority than decisions made in accordance with your laws! [43] Indeed, he is such a schemer that he challenged me to refer even this dispute to arbitration not so we could reach a settlement but, just as he spent the past eleven years making trouble, so even now, by voiding decisions given in my favor, he might bring malicious suits against me all over again and [so] put off this trial. [44] And here's the strongest proof: he didn't accept the lawful challenge I made to him;[69] and before that, when I referred the dispute over the name to Xenippus, whom he himself proposed as arbitrator, he forbade him to give a decision. You will see from the deposition and challenge that I'm telling the truth.

[DEPOSITION. CHALLENGE]

[45] Now that he refused the challenge,[70] preferring to ensnare me and postpone the suit as long as possible, he will accuse—so I hear—not only me but my father, claiming that, as a favor to me, that dear man did him much wrong. But just as you, judges, would think it especially wrong to be maligned by your own children, don't let him malign our father. [46] For it would be a terrible thing if you yourselves, after having been reconciled with those who under the Oligarchy killed many citizens without a trial, abide by the terms of the Reconciliation[71]—as is right for honorable men to do—but then would permit this man, after he

[69]See 40.38 for speculation about the contents of this challenge and Boeotus' challenge to Mantitheus, each designed for the other to refuse.

[70]Here ends an extended argument about Boeotus' challenge; Mantitheus has tried to deflect the potentially damaging sentiments that might have arisen in the judges' minds because he refused to accept it. His best argument is the last: Boeotus' refusal of the challenge he issued him. The effect of the challenges is canceled out.

[71]In 403, in the aftermath of the reign of the Thirty (see also 40.32n) and the restoration of democracy, the proponents of democracy and the adherents of the Thirty agreed on a general amnesty or "Reconciliation" (e.g., *Ath. Pol.* 38.4; And. 1.90; Isoc. 18.25). That the "you" who "became reconciled" is the same "you" as the jury almost sixty years later is a fiction. Similar identifications are not uncommon in Athenian oratory.

had been reconciled with my father during his lifetime and after he had enriched himself far beyond what was just, to cause injury by recollection and speak ill of that dear man![72] [47] Don't permit it, judges; rather, use every means to bar him from such conduct! But if he disregards your wishes and continues his slandering, reflect that he bears witness against himself that he isn't the son of that dear man. No, he couldn't be—for natural sons, even if they quarrel with their fathers when they are alive, yet praise them after their death; but those who are treated as sons, if they aren't so by birth, readily quarrel with their "fathers" while they are alive and don't hesitate to slander them when they are dead. [48] Apart from these considerations, reflect how strange it is that my opponent reviles his father for "doing him wrong"—although he is your fellow citizen only by virtue of that dear man's "going wrong."[73] For my part, even though I was deprived of two-thirds of the estate because of the mother of these men, nevertheless, I would be ashamed to say before you anything scandalous about that lady; [49] yet this man feels no shame in disparaging in your presence the man whom he compelled to be his father and has achieved such a state of boorish perversity that while the laws forbid us to speak ill even of the deceased fathers of others,[74] he will vilify the man whose son he claims to be—when it would be proper for him to show resentment if anyone else did so!

[50] I think, judges, that since he can't find other arguments, he will resort to criticizing me and will try to slander me, re-

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[72] *Mnēsikakein* ("to injure by recollection") is often translated "to recall past grievances" and is often so translated, e.g., in the negative phrase that appears in the Reconciliation: "Otherwise no one was *to recall the past misdeeds* (*mnēsikakein*) of anyone, except for those of the Thirty, the Ten, the Eleven, and the governors of the Piraeus" (*Ath. Pol.* 39.6, trans. Rhodes, italics mine). Similar formulae appear in speakers' accounts of private reconciliations in, e.g., 41.4, 59.46 and 71.

[73] Paley 1896: 236–237: "There is a play on the double sense of *hamartein* ["to make a mistake, err"], which is often used as a euphemism for the frailties of love. See Eur. *Hipp.* 463, *Suppl.* 900."

[74] The speaker alludes to a law that is ascribed to Solon and paraphrased at Dem. 20.104.

counting how I was brought up and educated and wed in my father's house whereas he lacked these privileges. But don't forget that my mother died, leaving me a mere child, so that the interest from her dowry had to suffice for my support and education.[75] [**51**] Their mother Plangon, on the other hand, raised them in her house together with a throng of female servants and lived in luxury, using my father, who was passionate about her, as her private underwriter[76] and compelling him to spend freely. No doubt she spent far more of his estate than I, so it would be far more fitting for me to bring charges against them than for me to be charged by them. [**52**] For besides other matters, I borrowed jointly with my father twenty minas from Blepaeus the banker to obtain a mining concession,[77] and after my father died, I shared the mining rights with them, but I had to pay back the loan on my own. And I borrowed another thousand drachmas for my father's burial from Lysistratus of Thoricus, and I personally paid it back in full. You will know from these depositions that I'm speaking the truth in these matters.

[DEPOSITIONS]

[**53**] Well, seeing how he has so often taken advantage of me, will this man now complain and lament his sufferings and deprive me of my mother's dowry as well? But, judges, in the name of Zeus and the gods, don't be browbeaten by this man's shouting. For he is exceedingly, yes, exceedingly reckless—and such a scoundrel that for any matters for which he has no witnesses, he will simply assert that you know it. This is just what all men do, judges, when they don't have a sound case.[78] [**54**] You, then,

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[75]A son inherited his mother's dowry, but if he was a minor, the interest could be used for his maintenance. Presumably his father or guardian managed this.

[76]The speaker literally says that his father was Plangon's *chorēgos*, a rich citizen who funded a chorus; see Dem. 39.7n.

[77]Blepaeus was a well-known Athenian banker who is also mentioned at 21.215; for further references, see Cohen 1992: 21 n. 89.

[78]The speaker resorts to the same device in 40.9, 11, 23, 28, and 58.

if my opponent should try any trick like this, don't let him get away with it but put his claims to the test—and if anyone of you is unsure of some detail, don't assume that your neighbor knows it but require him to demonstrate clearly whatever assertion he makes, and don't let him avoid the truth by asserting "you all know" something when he has nothing just to say about it. For although all of you know how my father was compelled in the end to *adopt* these men, I'm nevertheless suing them and have furnished witnesses who are held accountable by law for the statements they make.[79]

[**55**] Still, the risk is not the same on both sides. If you should now be deceived by these men, I'll be unable to proceed any further about the dowry, whereas if they say that the arbitrator decided the cases unfairly in my favor, then, just as they could appeal the earlier decision to you, so too they will now be able, if they wish, to bring a suit against me once again in your court.[80] [**56**] Furthermore, if you abandon me (as I hope you will not!), I'll not have the resources to give my daughter a dowry (remember that although I'm really her father, if you should see how mature she is, you would think she was my sister, not my daughter). But if you assist me, they will pay nothing from their own purses but will be returning my own property to me from the house that we

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[79]A litigant can object to the testimony of his opponent's witnesses at the end of the trial; then, when the trial is over, he may sue the witness for giving false testimony; the suit is a *dikē pseudomartyriōn* ("a private suit for false testimony"). See the Introduction to Dem. 45, n. 4.

[80]As Lipsius 1905–1915: 863 n. 55 has pointed out, the reference here cannot be to the official arbitration of Boeotus' claim against Mantitheus to recover Plangon's dowry (40.17), since the period allowing an appeal had long passed. Mantitheus must be referring to the official arbitrations that preceded the current countersuits. Apparently, the arbitrator decided both cases in Mantitheus' favor, and Boeotus has appealed the decisions. There may be a slight deception in Mantitheus' statement, "so too they will now be able, if they wish, to bring a suit against me once again in your court"; the decision to appeal the arbitrator's decision will already have been made (unless there was a specific provision for "countersuits" that permitted the decision to appeal to await the decision of the first trial in the series).

all reserved jointly for the payment of the dowry but is occupied by them alone even to this day. [57] For, since I have a daughter of marriageable age, it's not proper for me to live with men of their sort who not only themselves live debauched lives but who even bring many others like themselves into the house. No, by Zeus, I don't think it's safe even for me to live in the same house with them! For when they so openly plotted against me and contrived a trial before Areopagus, do you think they would refrain from using poison or any other criminal means? [58] In addition to their other villainies (for I just now remembered this one), they are so reckless that they have even furnished a deposition from Crito that says he bought my one-third share in the house. A false statement, as you will easily see. In the first place, Crito doesn't live so frugally that he can buy a house from someone else; rather, he lives so prodigally and lavishly that he spends other people's money in addition to his own. Second, Crito isn't a witness for my opponent but rather, he's my adversary in this case. For who among you is not aware that witnesses are men who do not have an interest in the substance of a case, whereas adversaries share an interest in the issues about which someone sues them?[81] So it is with Crito. [59] And third, although there are so many of you, judges, and so many other Athenians, too, no one else has testified that he was present at this sale with the sole exception of Timocrates who—like a *deus ex machina*[82]—not only testifies that my father gave this man a tenth-day feast (even though he is the same age as my opponent), he also claims to know absolutely everything that is advantageous for these men and so now he alone testifies that he was present when Crito bought the house

[81] Mantitheus refers (in distorted manner) to the law forbidding a man to act as witness in his own case (see Dem. 46.9–10); if Crito maintains in testimony that he owns a third of the house that Mantitheus claims is his, then Crito not only has a stake in the case but should also be a defendant from whom Mantitheus claims the dowry. More likely, as Humphreys suggests (1989: 185 n. 16), Mantitheus has mortgaged his share of the house to Crito.

[82] A god who appears at the end of a play and imposes a solution when no other way can resolve the difficulties of the plot.

from me! Who among you could believe this? Especially since my suit isn't about whether Crito bought the house or not but about the dowry, which the laws specify that I should have since my mother brought it with her to the marriage.[83] [**60**] Therefore, inasmuch as I have demonstrated to you by means of many witnesses and proofs that my mother brought a talent as her dowry, that I did not recover this from my father's estate, and that we set aside the house for this purpose, you now should require my opponent to prove to you either that I'm lying or that it's not fitting for me to recover the dowry. For this is the issue on which you are now about to give your verdict.

[**61**] But if my opponent is unable to provide creditable witnesses or any other proof about the issues for which he is on trial, but goes on, villain that he is, introducing irrelevant topics and making indignant cries and complaints that have nothing to do with the suit, then, in the name of Zeus and the other gods, don't let him! Instead, help me obtain my rights! On the basis of all that has been said, bear in mind that it's far more just for you to vote that my mother's dowry should be used for the marriage of my daughter than that Plangon and these men, in addition to all their other villainies, should also rob me of the house that was set aside for the payment of the dowry and so act contrary to all justice.

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[83] The law about dowry was read to the court at 40.19.

41. AGAINST SPUDIAS

INTRODUCTION

This short speech emerges from an inheritance dispute carried on by two men, Spudias and the unnamed speaker, who are married to two sisters, the daughters of the deceased Polyeuctus of the deme Teithras and his more recently deceased wife. The speaker claims that 1,000 drachmas are owed to him from Polyeuctus' estate; the sum is the unpaid portion of his wife's dowry that was to consist of 4,000 drachmas in its entirety. He also demands of Spudias that he return 2,000 drachmas to the estate's common fund: 200 drachmas were borrowed from Polyeuctus to purchase a household slave (41.8), and 1,800 drachmas were borrowed from Polyeuctus' wife (41.9). Also to be returned are a bowl and some jewelry taken from the same lady and then pawned; other items, such as a tent, likewise must be entered into the account. Finally, the speaker asks Spudias to make a contribution to the cost of celebrating the feast of the dead for the deceased father-in-law.

Although these rather straightforward claims suggest a run-of-the-mill inheritance dispute, the speech provides an interesting bird's-eye view of "household borrowing" by which a woman, in one case, appears to be the lender of a sum much higher than the lawful limit set for a woman's financial transactions.[1] The speech

[1]The law is paraphrased at Is. 10.10: "The law explicitly forbids a minor or a woman from contracting for more than a *medimnos* of wheat." The price of wheat fluctuated in the fourth century (ranging from 6 to 16 or 18 drachmas *per medimnos*); see Markle 2004 [1985]: 125–131 for these values and Harris 2006 [1992] for a consideration of ways in which Athenian

also sets in motion a number of perplexing legal questions regarding adopted sons (can they be disinherited?), divorce (can a father remove his daughter from a marriage?), *epiklēroi* or "heiresses" (e.g., how is an estate to be divided between them? must they really marry nearest kin or can that be avoided?), and, perhaps most importantly, security for a debt (who owns it?). Most of these questions unfortunately are irresolvable on the basis of our exiguous and equivocal evidence.

The Dispute

The speaker tells us that his father-in-law Polyeuctus, having no male issue, adopted his wife's brother Leocrates and gave him his younger daughter to marry. Such an arrangement was not unusual in Athens: on her father's death, a daughter without a brother became an *epiklēros*. The eldest relative on her father's side (often his brother) had a legal right to marry her and to possess her father's estate until their children came of age.[2] The father of an *epiklēros* might avoid this situation by adopting a son to marry his daughter either before he died or in his will. The adopted son would then become heir to his property and would carry on the family traditions; the daughter would no longer be an *epiklēros* and up for grabs by her father's brothers. Polyeuctus' arrangement for his younger daughter would thus have been seen as quite normal.

The speaker, on the other hand, was given the elder daughter along with a dowry of 4,000 drachmas, of which 1,000 was to be paid at a later time. By agreement with Polyeuctus, Leocrates, the adopted son and therefore heir to the estate, was to serve as guarantor for the debt, payable upon Polyeuctus' death; an agreement (*symbolaion*, 41.5) to that effect existed between Leocrates and the speaker. Unfortunately, Polyeuctus and his adopted son quarreled;

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women could play a (limited) role in financial transactions without overstepping the law; see also 41.9 and 22 with nn.

[2]For a more detailed depiction of an *epiklēros*, see the Introduction to this volume, IV2b.

Polyeuctus took back the younger daughter and gave her to Spudias.[3] Apparently, the adoption was dissolved along with the marriage.[4] Leocrates sued Polyeuctus, and a settlement was achieved by which Leocrates, upon recovering all that he had brought into the estate, would be reconciled, and both men would be released from all claims against one another. The speaker, however, was now left without a guarantor for the 1,000 drachmas. Polyeuctus, having become seriously ill, repaired the situation: he left directions in his will that pillars (*horoi*) be set up on the house to serve as security for the sum.[5] Spudias, so the speaker complains, will not surrender the 1,000 drachmas and is also preventing him from collecting the rents from the house (41.5).

The dispute did not arrive in court until after the death of Polyeuctus' wife; apparently, the estate had remained intact during her lifetime.[6] The claims made by the speaker both for the return of

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[3]It is not certain whether a father had legal authority to end his daughter's marriage or simply exerted strong moral authority; see Scafuro 1994: 307–309 for discussion of the evidence and relevant bibliography.

[4]See 41.4n.

[5]There are extant 245 pillars (*horoi*) that were placed on properties pledged as security in Attica (figures from Finley 1985 [1952]: viii). Of these, 33 are dotal and served to indicate real security for dowries; the term for such security is *apotimēma*. A typical example is *Agora* 19 **H** no. 81 (=Finley 1985 [1952]: p. xxvii, no. 148A [Millett]): "Pillar of house that has been pledged as security for the dowry belonging to [Kl]eitarete the daughter of S[ku?]thos of the deme of the Phrearrhioi consisting of 1,500 drachmas." For discussion of a similar *horos*, see Harris 2006 [1993]: 219 and, more generally, Harrison 1968: 296–303.

[6]There are no indications for how long she lived after her husband's death. Under normal circumstances, we would expect the heir to take possession of an estate on the death of a father; his wife would not inherit, although she might remain in the house of the deceased if she had male children; it is not known what happened if she had only borne daughters. Harrison 1968: 39 n. 1 observes that Is. 3.9 and 78 suggest that she would have been expected to return to her natal household. Polyeuctus' wife might very well have left the house after the death of her husband (note that the house has been rented out [41.5] and that her brothers are presented as witnesses to the loan of 1,800 drachmas to Spudias [41.9]); not much time may

the unpaid portion of the dowry to him and for the return of borrowed moneys and property "into the general account" (41.8, 10, 11, 20), as well as the mention of an inventory containing "what each of us has in his possession" (41.28), definitely suggest that the estate is about to be divided and passed on to its heirs and so must at this point be identified in its totality.[7] That the speech is part of an adjudication hearing to settle the individual claims among the heirs is, however, unlikely: those hearings are held before the Archon (*Ath. Pol.* 56.6–7).[8] Since the case before us had a preliminary hearing before an official arbitrator (41.12), the Forty must be the presiding magistrates.[9] Nevertheless, the speech might still have been part of a trial that anticipated the distribution of the estate: individual claims on it must first be satisfied.

Some scholars have suggested that the speech belongs to a lawsuit for the recovery of money (*dikē argyriou*).[10] Other scholars suggest, on the hypothesis that the speaker has despaired of the return of the 1,000 drachmas owed for the dowry, that he is now laying claim to the house and its rent.[11] The house, we recall, had

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have elapsed since her death; and some of the time since Polyeuctus' death may have been filled with attempts at arbitration.

[7]The title bestowed on the speech by the manuscripts ("Against Spudias Regarding a Dowry") is clearly wrong: the speech has to do with more than a dowry. Presumably, early editors of the collected speeches of Demosthenes did not have a title for the speech but invented one on the basis of the preponderance of the argument about dowry and accordingly placed the speech next to 40, given its kindred subject matter.

[8]As Gernet (1957: 59) points out, it is probably not a suit for the appointment of distributors in a case in which objections have been raised to the administration of property in common (*Ath. Pol.* 56.6; see Lipsius 1905–1915: 576 n. 103).

[9]Private cases that are brought to the Forty (or rather, to its four members who represent the tribe of the defendant) are first heard by an official arbitrator; see the Introduction to Dem. 39 at nn. 12–13.

[10]Lipsius (1905–1914: 496–497): *dikē argyriou*; Thalheim (1892 in Lipsius, 653 n. 61) and Schaefer (1858: 3.2. 228): *dikē blabēs* (suit for damages).

[11]Gernet (1957: 59) thought that two remedies might have been combined: a suit for the house (*dikē enoikiou*) and for the recovery of the borrowed moneys (*dikē argyriou*). There is no evidence for the combining of

been pledged to the speaker as security for the debt owed from the dowry. The value of the security will be equal or greater than the debt itself (exact equivalence seems not to be a requirement). Hence, the speaker has the right to take possession of the entire house if the debt is not paid, although it seems that he may recover from the sale of the house only the amount that is owed him.[12] Accordingly, the speaker may have tried to "seize" the house but failed, and now he is suing to win a court order for possession. This view of the case wins some corroboration from the behavior of Spudias: he has brought a countersuit against the speaker (41.12–13) and "is trying to prevent him from collecting the rents" (41.5), perhaps not by physical force but by the counterlawsuit.[13]

Questions remain. The daughters, on the death of their father, became *epiklēroi* and so were now available as wives to Polyeuctus' kin. Nonetheless, there is no hint that any kinsmen were readying themselves to dissolve the current marriages of Polyeuctus' daughters. Perhaps there were no relatives available in the required degree of kinship or at least none willing to exercise their legal right. In that case, it is odd that Polyeuctus did not adopt one of his sons-in-law. He could have done so in his will posthumously, and if he had done so, the adopted son would have be-

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suits nor even for the application of the *dikē enoikiou* (which nevertheless remains a possibility: see Harrison 1968: 222–227).

[12]Much is uncertain here. If the debtor (i.e., the man who has given the security—in this case, Spudias as heir of Polyeuctus) does not repay the debt, then the creditor (the man who has been the recipient of the security, i.e., the one who "holds" or "possesses" the security—in this case, the speaker) can "seize" the property that is his security (in this case, the house). Biscardi (1999 [1983]: 180–188) has shown that the creditor (here, the speaker) has the right to sell the security to recover only the amount owed him; the debtor (here, Spudias, as representative of the heirs of Polyeuctus) retains the right to the excess.

[13]This is the view of Harris 2006 [1993]: 85 ("After Polyeuctus died, the speaker attempted to take possession of the house and collect the rents paid by its tenants. . . . In this respect, the speaker acted just like a creditor who has seized a security in lieu of repayment") and 236 n. 70 regarding Spudias' suit. See also Harrison 1968: 296–303.

come heir and carried on the family's name and household traditions;[14] but again, there is no hint of such an adoption of Spudias or of the speaker in the oration. Unless Polyeuctus was entirely unconcerned about the demise of his *oikos* ("household"), which is unlikely, or ambivalent regarding the status of his daughters as *epiklēroi*, then he must surely have made some arrangement. Here, one can only speculate, and Gernet's speculation is attractive: Polyeuctus may have looked forward to the posthumous adoption of one of his grandsons. If so, one can easily imagine that the dispute over the estate will continue into the next generation. A race between the daughters to produce a son for posthumous adoption might ensue. Then, if a posthumously adopted son should reach majority, he would be able to claim the estate of Polyeuctus. This is the point at which new problems would arise: is he to have the entire estate (and therefore, at the time of our speech, the estate will not have passed into the "ownership" of the sororal families but merely into their temporary enjoyment of its revenues)? Moreover, is he to claim that the dowries of the daughters formed part of that estate? Whether the law was uncertain on these points or not (and we have no evidence to determine answers), there is sure to be trouble in this family for decades to come.

The size of the dowries and the debts owed the estate suggest that Polyeuctus' family was a wealthy one. A base for statues inscribed with the name of the fourth-century sculptor Praxiteles discovered on the Acropolis carries on the right side a dedication to Demeter and Korē from "Kleiokrateia, daughter of Polyeuktos of the deme Teithras, wife of Spoudias." The left side is blank. The publisher of the statue base and inscription suggests it had been reserved for the names of the older daughter and her husband but was left blank because of the quarrel.[15]

The speech cannot be dated but is probably an early work of Demosthenes. No one has offered serious reason to doubt its ascription to Demosthenes.

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[14] For posthumous adoption, see the Introduction to this volume, II.3.

[15] Shear 1937: 339–342.

41. AGAINST SPUDIAS, CONCERNING A DOWRY

[1] They are sisters, oh judges, the women we have married, I myself and this fellow Spudias—they are the daughters of Polyeuctus. And since the last died without male offspring, I am forced to bring suit against this man over the estate. Truly, judges, if I had not exerted myself zealously and taken every step to resolve this dispute and to refer our differences to the arbitration of friends, I would have blamed myself for preferring lawsuits and trouble to suffering minor losses.[16] [2] But as it was, the more conciliatory and amicable the manner of my discourse with the man, the more arrogant he became. And now it turns out that our risks are not at all alike in this contest here: while he is perfectly comfortable, having grown accustomed to appearing before you, I fear this very thing, that due to inexperience I'll not be able to explain my case clearly to you. Nonetheless, judges, pay attention.

[3] Now Polyeuctus, who belonged to the deme Teithras,[17] is perhaps not unknown to some of you. Since he had no sons, Polyeuctus adopted Leocrates, his wife's brother, and, as he had two daughters by Leocrates' sister, he gave the elder to me in marriage with a dowry of forty minas,[18] and the younger one to Leocrates. [4] Such were the arrangements when a quarrel arose between Polyeuctus and Leocrates—about which I need say nothing, except that Polyeuctus took back his daughter and gave her to Spudias here.[19] After this, Leocrates was angry and filed suits against

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[16]Litigants do not want to appear litigious, and so they frequently claim they have sought to settle their disputes privately before entering court. See, e.g., Dem. 27.1; 30.1; 40.39, 43–44. Dionysus Halicarnassus *Lysias* 24 reports that writers of rhetorical handbooks highly recommend the motif, especially when the litigants are relatives.

[17]The name of the deme (Teithras) on the dedication mentioned at the end of the Introduction has led to the emendation of the deme name provided by the manuscripts (Thriasus).

[18]Forty minas are equal to 4,000 drachmas or two-thirds of a talent, a hefty sum.

[19]See the Speech Introduction, n. 3. There is some evidence that a father could disinherit a natural son by *apokēruxis* (see above, Dem. 39.39n), and it

Polyeuctus and Spudias.[20] They were compelled to render an account of all matters, and in the end they agreed that Leocrates was to recover whatever he had contributed to the estate and not bear a grudge against Polyeuctus, and all the charges by either party against the other were to be dropped.[21]

[5] Why, judges, have I told you this? Because I did not receive the entire dowry; a thousand drachmas were held back, which, by agreement, I was to recover upon Polyeuctus' death. So long as Leocrates was Polyeuctus' heir, the agreement was between Leocrates and me; but when he had left the family and Polyeuctus was seriously ill, then, judges, as security for the ten minas I accepted this house[22]—from which Spudias now is trying to prevent me from collecting the rents.[23] [6] First, I'll provide as witnesses for you the men who were present when Polyeuctus pledged his daughter to me with a dowry of forty minas;[24] next,

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is not unlikely that this procedure could also be used in regard to adopted children.

[20]The kind of suit that Leocrates filed against Polyeuctus and Spudias is not known (for damages? for recovery of money?). Since the dissolution of the marriage seems to have entailed the dissolution of the adoption (by what means is uncertain), Leocrates lost not only the use of a dowry but also a portion (if not all) of the inheritance from Polyeuctus. The terms of agreement may have included some compensation to Leocrates for his foundered expectation; see 41.27n.

[21]The terms have the hallmarks of a reconciliation (*dialysis*): reciprocal concessions, goodwill for the future (lit., "not to harbor a grudge," *mēte kakonoun*; cf. 40.46n), and a release (*apallagē*) from all charges (cf. Is. 2.31–32; Dem. 59.46 and 71). The "release" bars any further complaint on the matter from entering court. The agreement could have been executed in a courtroom (Is. 5.18) or before arbitrators or mediators or even in their absence.

[22]The verb translated here as "accepted as security" is a passive form (lit., "I was given in pledge X as security" or "I was mortgaged X"); 41.27n and the Speech Introduction at n. 5.

[23]It is unclear what activities led Spudias to prevent the speaker from collecting the rent; see the Speech Introduction at nn. 10–13.

[24]"Pledging" a daughter is part of the process of marriage by *engyē*; see the Introduction to this volume, I, at nn. 17–21.

I'll prove that the sum I received was less by a thousand drachmas and then, that Polyeuctus always acknowledged his indebtedness to me and offered Leocrates as a guarantor and that while dying, he wrote instructions in his will that pillars be set up on the house for a thousand drachmas of the dowry owed to me.[25] [*To the secretary*] Please call the witnesses.

[WITNESSES]

[7] Well, judges, this is one of my claims against Spudias. And regarding this, with what greater or more convincing proof could I stand before you than with the law that explicitly forbids legal remedies for persons who have pledged property as security or for their heirs?[26] Yet Spudias has come here to dispute this lawful provision. [8] My second claim, judges, is for two minas that Polyeuctus on his deathbed claimed were owed to him (as Aristogenes testified) with interest by Spudias (this is the price of a household slave whom he had bought from Polyeuctus, but he has neither paid the sum nor reported it to the family account)[27] and for eighteen hundred drachmas[28]—for which I have no idea what lawful explanation he'll be able to offer. [9] For he had borrowed the money from Polyeuctus' wife, and there are records that she left behind when she was dying, and the woman's brothers are witnesses since they were present at all times and kept questioning her on individual points so there mightn't be any misunder-

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[25]The *horoi* (pillars) are placed around the house and show that the house is security for a debt. See the Speech Introduction, n. 5.

[26]For the meaning of this sentence, see Harris 2006 [1993]: 236. Another paraphrase of the law is given in 41.10.

[27]Two minas are the equivalent of two hundred drachmas. Observe that Spudias has bought the slave "on credit."

[28]The translation in the text above adheres closely to the word order of the Greek text; the separation of the two loans (two minas and 18 minas) is corroborated in 41.22, where the second loan follows Polyeuctus' death. For a different view, see Harris 2006 [1992]: 344–345. See also 41.22n.

standings between us.[29] So, isn't it terrible and cruel—that while I paid the interest and honored the payment of everything that I had bought from Polyeuctus during his lifetime or had acquired from his wife and while even now I'm contributing to the family account everything I owed, [10] this man has no regard for your laws nor for what Polyeuctus devised in his will nor for the documents that were left behind nor for those who know the facts, but he prefers to come into court to dispute my claims?

Please, [*to the secretary*] first take the law that forbids lawsuits against those in possession of property that has been pledged as security,[30] and then the documents that were left behind, and Aristogenes' deposition.

[LAW. DOCUMENTS. DEPOSITION]

[11] Now, judges, I would like to inform you of my other claims as well, taking them one by one. After they took a bowl from Polyeuctus' wife, they pawned it along with some pieces of gold; though they redeemed it, they have not reported it, as Demophilos, the man to whom it was pawned, will testify. They have also taken a tent, and they don't even report this. And how many other similar items are there? Finally, though my wife gave an advance

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[29]Gernet 1957: 63 n. 2 suggests that the brothers were present "at all times" in their capacity as *kyrioi* of Polyeuctus' wife (i.e., they were her legal representatives).

[30]Following the explanation of Harris 2006 [1993]: 235, "those in possession" are "creditors who have seized a property pledged as security after the debtor has defaulted" and the law therefore "bars the debtor and his heirs from bringing an action against the creditor in possession of his property." Creditors may bring a lawsuit against defaulting debtors (a *dikē exoulēs*, a lawsuit granting the right to seize property); but neither the debtors nor his heirs may do so. Harris concludes: "By denying the debtor's right to challenge the creditor's possession of the property, the statute in effect protects the creditor's right of ownership to property he has accepted as security and distrained upon in satisfaction of an unpaid debt." Harrison 1968: 300 with n. 1 offers the same interpretation.

contribution of a mina of silver to the Nemesia for her father,[31] he refuses to contribute even a fraction of this sum. Instead, he has some items in his possession because he took them in advance; as for his share of other items, he's getting them back; and as for other debts, he thus openly refuses to pay them back.

Now, so that these claims, too, may not be passed over, [*to the secretary*] please take the depositions for all of them.

[DEPOSITIONS]

[12] Perhaps, judges, Spudias will not reply to any of these charges (for he won't be able to, no matter how skillful he is) but will put the blame on Polyeuctus and his wife, saying that under my influence they unfairly favored me in everything and that—by Zeus!—he has suffered many grievous injuries and has lodged a suit against me. Yes, indeed, for these, too, are the responses he ventured to make before the arbitrator. **[13]** But for my part, judges, in the first place, I don't think that a defense of that sort is just or even proper, that is, for a man, when he is clearly shown to be in the wrong, to turn back the charges and make accusations and slanderous statements. No, indeed—if he really is being wronged, he will clearly get satisfaction for those claims, but for these, he will pay. For how could I retort to their slanders now—and abandon matters on which you are going to render a verdict? **[14]** Second, I wonder, why in the world, if he really did have true and just claims to make, when friends were willing to reconcile us and when many discussions had been held, he couldn't abide by the proposals they made? And yet, who could better have shown the falsity of his claims or my own than the men who had been present at all these events, who knew—no less than we did—what had happened, who were friends in common to both of us? **[15]** But clearly this was not to his advantage—to be proven wrong openly by these men and obtain a settlement in this manner. For don't think, judges, that those who know all the circum-

[31] The Nemesia is a celebration in honor of the dead about which we know very little.

stances and are now putting themselves at risk to give testimony on my behalf would have made proposals about these matters any differently at that time when they were under oath.[32] Nevertheless, even if none of these proofs were sufficient for you, it still isn't difficult to decide which of the two of us is telling the truth. [**16**] For concerning the house, if he says it was under my influence that Polyeuctus gave orders for setting up the pillars for the thousand drachmas, [*to Spudias*] yet surely I didn't also "influence" the witnesses, Spudias, to give false testimony on my behalf—witnesses who were present when Polyeuctus betrothed his daughter to me; who knew that I received less than the full amount; who heard Polyeuctus acknowledge his debt to me when he introduced the man who would repay me; and who, in the end, were present when the will was deposed. For all these men it was no longer a matter of favoring me but rather of risking prosecution for false testimony, if they should testify falsely. So let's drop these matters right now.

[**17**] And what can you say in response? For you must be sure to instruct these men accurately. [*To the judges*] If not, then all of you demand that accuracy from him. For at the time when Polyeuctus was making these provisions in his will, Spudias' wife was present, and surely she reported the provisions of her father's will—especially if he wasn't getting an equal share but was being put at a disadvantage in every way. And he himself had been invited, so that he can't even say that we concealed these matters from them by acting in secret. For he himself admits he was invited but was too busy and that his wife's presence was enough.

[**18**] So what's left? Even when Aristogenes gave him an accurate report of all these matters, he evidently didn't set any value on them; and although Polyeuctus was still alive for another five

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[32]The witnesses are at risk for prosecution for giving false testimony (see Dem. 40.54n). The speaker claims that his witnesses, when serving as mediators, made the very same proposals (presumably favorable to the speaker) that they have attested before the court; during the failed reconciliation, the oath constrained them to offer only just proposals. More rhetorically effective here (because simpler) is his insinuation that his witnesses are the only ones who know the whole story.

days, Spudias wasn't ruffled when he visited him nor did he make any protest—nor did his wife, either, although she was present from the beginning on all these occasions. So it no longer appears that it was under my influence that Polyeuctus kept bestowing favors on me; rather, [*to Spudias and supporters*] you yourselves were responsible. Recall these facts clearly, judges, and if he now tries to make any slanderous statements about these matters, show resistance. But first, that you may know accurately that it happened this way, hear the witnesses. [*To the secretary*] Read.

[WITNESSES]

[19] Therefore, judges, in addition to the others here who have given depositions, Spudias himself and his wife testify that Polyeuctus gave the house as security for the thousand drachmas justly and for a debt that is still owed to me; for they were in agreement at the time, and they made no protest, either to Polyeuctus (although he was alive for so many days more) or again to Aristogenes as soon as they heard the terms of the will. But if indeed the house was given as security fairly, you cannot, if you are mindful of the law, acquit Spudias in regard to this particular point.

[20] Now consider as well the twenty minas, which he doesn't contribute to the account. Here, too, Spudias himself will once again be my best witness—not, by Zeus, in the words he uses as he makes his defense—for words are not good evidence—but by his conspicuous action. By doing what, judges? Pay close attention now so that if he really dares to make any more slanderous remarks about the mother of our wives or about the documents, he won't be able to deceive you with his words because you will know. **[21]** These records here were left behind by the wife of Polyeuctus—as I mentioned a little while ago. And when the seals were acknowledged by his wife and by mine, the two of us, being present, first broke them open and took copies, and then, after sealing them up again, deposited them with Aristogenes. **[22]** Now mark this carefully, judges, mark it, I beg of you. For two minas were noted there, the price of a household slave (so it wasn't only Polyeuctus on his deathbed who had put a claim on

them!).[33] The eighteen hundred drachmas were also noted. After Spudias read these items, if the written statements had nothing to do with him and were untrue, why in the world didn't he immediately complain? And why did he join in sealing up the documents again if they were false and inaccurate? No one alive would have done this unless he were in agreement with all the written contents! [**23**] Surely, judges, it's utterly dreadful if they will be permitted to protest against facts they themselves have avowed and if you refuse to accept as evidence the fact that no one when faced with a false and unjust accusation keeps silent but protests immediately; and if anyone does not behave this way and contests the charge afterwards in court, then he seems to be a villain and malicious litigant. [**24**] Now Spudias knows this as well as I do, and even better, I think, since he comes before you so often and feels no shame in making statements that contradict his every action. And yet often when you become conscious of just one act of fraud, you use this as proof of the rest of the charges. So it has turned out that my opponent has been convicted by himself on every point. [*To the secretary*] Now please take up the deposition proving that the seals for the documents were acknowledged at that time by his wife and that they are now, after first having been sealed by Spudias, deposited.

[DEPOSITION]

[**25**] Since, then, these facts have now been so clearly demonstrated, I don't think there's any need to speak further—for when I am able to furnish laws and witnesses to corroborate all my statements, and the opponent himself is in agreement with me,

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[33]The implication here is that Polyeuctus' wife also put a claim on the two minas. The passage indicates that the second and larger debt followed the death of Polyeuctus (see Gernet 1957: 67 n. 2 contra Harris; see 41.9n). Harrison 1968: 114 n. 2 points out that the brothers of Polyeuctus' widow were present as witnesses to the loan as it was recorded in the *grammata* (41.9) and "it may be that they were in fact assenting *kyrioi*, though this is not stated"; similarly, Gernet 1957: 63 n. 2.

what need is there for lengthy speeches? Nevertheless, if he's upset about the dowry and says that he's being defrauded of a thousand drachmas, he will be lying. For he quarrels over this sum when he has not less but more in his possession—as will be clear to you very soon.

[**26**] Yet even if all these claims of his were true, surely it's still wrong for me to be deprived of the dowry that had been agreed upon—unless the laws are a dead letter,—and it's wrong, too, for Polyeuctus to be thwarted now, if it was his design to give a smaller dowry to one daughter and a greater one to the other. [*To Spudias*] After all, Spudias, you could have refused to marry if a thousand drachmas were not added to your dowry as they were to mine. But you received no less than I did—as I shall demonstrate. First, then, take the deposition that shows the terms on which a wife was given him.

[DEPOSITION]

[**27**] How, then, did he get as much as I did, you may ask, if in his case the jewelry and garments worth a thousand drachmas were calculated into the forty minas, but in my case the ten minas were paid to me as an additional and separate transaction?[34] This, too, I intend to explain.[35] For Spudias, judges, received his wife from Leocrates along with the jewelry and garments for which Polyeuctus had additionally paid more than a thousand drach-

[34]A curiously similar division of a payment into cash and personal items appears in Plautus' *Curculio*: the soldier Therapontigonus, who has arranged to purchase a courtesan, has paid out 3,000 drachmas to the banker (492, 535, and 66); the girl's jewelry and clothing are to be delivered separately with her (348, 433–435); the jewelry and clothing cost an additional 1,000 drachmas (344).

[35]The speaker claims that he had received 3,000 drachmas in cash, plus some additional items sent by Polyeuctus and was still owed 1,000 drachmas; Spudias had received 3,000 drachmas in cash, jewelry and garments worth over 1,000 drachmas, plus additional items equivalent to those sent to the speaker.

mas to Leocrates.[36] But as for me—if you compare the items that Polyeuctus sent me apart from the dowry—that is, all that I have in my possession—to the items that were given to Spudias, you will find them just about equal—apart from the items taken in valuation for the thousand drachmas.[37] [**28**] Therefore, it was reasonable for these items, the jewelry and the garments, to be calculated into the forty minas, since Polyeuctus had paid the equivalent amount to Leocrates—which was more than what was given to me. [*To the secretary*] Now please take up this inventory here first and read to them precisely what each of us has in his possession; after this, take up the deposition of the arbitrators, so they may see that Spudias has even far more material wealth than I do, and that Leocrates kept complaining about this, and that the arbitrators made decisions regarding these matters. Go ahead and read.

[INVENTORY. DEPOSITIONS]

[**29**] Isn't it clear, then, that the defendant has long had forty minas, as his wife's dowry, whereas I received thirty—just as he did—but not only did I not receive the thousand later on but even now I risk losing them on the grounds that my claim is unjust? This is why, judges, Spudias refused to refer these matters to

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[36] I have accepted the reading *prosapeteisen* ("paid in addition") chosen by Rennie (*OCT* 1931) and Dilts 2009. Accordingly, Polyeuctus had paid over 1,000 drachmas to Leocrates for the return of the jewelry and garments, possibly in compensation for the dissolution of the adoption. This permits the meaning here to harmonize with the end of the next sentence; see the next note.

[37] The "items taken in valuation for the thousand drachmas" are in addition to "the items that were given to Spudias" and refer to the jewelry and garments that had been brought by Spudias' wife from her previous marriage. I have accepted Gernet's emendation *enapotimēthenton* (cf. Dem. 53.20) instead of the *apotimēthenton* of the manuscripts; the latter word would refer to the items (i.e., the house) used as security for the thousand drachmas owed to the speaker for the unpaid portion of his dowry.

the arbitration of friends and be rid of his claims against me—because he would have been refuted on every point. Since these men had been present throughout and knew the facts, they wouldn't have permitted him to say whatever he wanted, but before you, he thinks he will prevail with his lies while I speak the truth. [30] And yet, concerning the charges I am making, I have explained them to you as clearly as I could by myself, whereas he kept avoiding men who were familiar with his case, since he realized he could not lead them astray. Now then, don't you, judges, permit him to tell slanderous lies, but be mindful of what has been said; for you know how every thing happened, except for anything I left out under the constraint of speaking while little water remained.[38]

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[38]See Speech 40.38n for explanation of the timing of speeches by a water clock.

42. AGAINST PHAENIPPUS

INTRODUCTION

This short speech emerges from a dispute over the undertaking of a liturgy or "public service."[1] Beginning ca. 378/7 BC, rich citizens (perhaps 1,000–1,200 in total) were assigned to tax-paying companies called symmories.[2] The three hundred richest of these men were distributed among the companies and acted as "advance-contributors"; they were required to pay the whole tax immediately and to make their own arrangements for reimbursement from the members of their respective companies.[3] By a law of Periander ca. 358/7,[4] twenty new symmories with sixty men apiece were created for naval purposes; each symmory (or "naval board") was to maintain so many triremes from the total number required for the year.[5] Finally, by a law of Demosthenes ca. 340, the lion's share of liability for the trierarchy seems to have been

[1] Liturgies were undertaken by rich citizens who provided support for festivals or military endeavors; those mentioned here are military. For an introduction to the liturgical system, see Davies 1971: xvii–xxxi and 1981: 9–37.

[2] The date for the establishment of these symmories is provided by Philochorus *FGrHist* F 41; many scholars think there were one hundred such companies at this time. For a simple presentation of sources and discussion, see Hansen 1991: 112–113.

[3] See Hansen 1991: 113 with n. 339.

[4] See Dem. 47.21nn.

[5] For details, see Gabrielsen 1994: 183–212.

handed over to the Three Hundred.[6] Oration 42 was delivered in the period to which Demosthenes' law applied; its speaker is a member of the Three Hundred, and he earnestly wants to be exempted from trierarchic service.

The laws regarding liturgies allowed certain exemptions; for example, minors were exempt until a year after they came of age, and no man could be required to carry out two liturgies in the same year.[7] A man appointed to a liturgy for whom there was no statutory exemption might still think it too burdensome to shoulder; if so, there was a procedure by which he could lawfully resign (or dodge) it: he could name a richer man to replace him. The procedure was called *antidosis* ("exchange [of properties]")[8] and, if unsuccessful, could lead to a second phase, a *diadikasia* ("adjudication hearing"), to decide which of the two men was the richer.

Our sources permit the following outline of the first phase, *antidosis*. On the one day in the year fixed for initiating an exchange by the magistrate in charge of the particular liturgy, the unhappy liturgist would appear before him[9] and name the allegedly richer man to whom he would later offer a challenge: he should accept the liturgy in his place or else exchange all his

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[6]See Rhodes 1981: 680 for sources for Demosthenes' law. Some scholars think that trierarchic symmories may still have existed alongside the Three Hundred; see Hansen 1991: 114 and, in more detail, Gabrielsen 1994: 207–213. For the duties of a trierarch, see Dem. 39.8n.

[7]On minors, see Lys. 32.24 and Dem. 21.154. On two liturgies, see *Ath. Pol.* 56.3; Dem. 20.8; 50.9. For details, see Gabrielsen 1994: 85–87 and 1987: 8.

[8]In the works of the orators, the term (whether as noun or cognate verb) often does not connote an actual exchange of property but rather the entire procedure from which an exchange of property could result (e.g., 42.1, 4, 5, 18) or even a stage in the course of that procedure (e.g., 42.10, 30 bis). For detailed discussion of the terminology, see Goligher 1907: 494–502 and Gabrielsen 1987.

[9]*Ath. Pol.* 56.3 and 61.1; Dem. 42.5; Xen. *Oeconomicus* 7.3; [Xen.] *Ath. Pol.* 3.4. For interesting speculation on the frequency of such cases, see the evidence cited and analyzed by Christ 1990: 163–164.

property with him. The man so challenged must accept one or the other option; refusal of a liturgy was punishable by law.[10] If he accepted the liturgy, all was well and that was the end of the matter; the magistrate undoubtedly registered his name and deleted that of his predecessor. Our sources are not abundantly clear regarding what happened if the recipient of the challenge chose the other option.[11] The bulk of our information comes from Oration 42.

A "Frustrated Exchange" in Speech 42

The unnamed speaker is a member of the Three Hundred but now claims he has suffered severe reverses and asks to be replaced by a rich young farmer named Phaenippus (42.4). He recounts how he had gone to the office of the Generals on the day fixed for exchanges for the Three Hundred and summoned Phaenippus (42.5).[12] Each man later swore an oath (contents unknown) and within three days was to produce an inventory of his property, which included debts and mortgages (42.1, 11, 12, 28). Thereafter, the speaker gathered friends and kin and traveled to Phaenippus' estate to inspect, in the owner's presence, its extent, produce, and capacity for producing revenues; he specifically asked whether

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[10]Dem. 39.8 indicates that refusal of any liturgy was punishable by law; Dem. 51.4 and *IG* II^3 1629, lines 242–246 (325/4) attest penalties for trierarchic liturgies in particular; see Gabrielsen 1994: 92.

[11]Goligher 1907: 488 and 508–511 argued for a third option: the recipient of a challenge could refuse both the liturgy and the exchange; for refutation, see Gabrielsen 1994: 92 and 1987: 23–24 and below, n. 22.

[12]The author of *Ath. Pol.* 61.1 details the tasks of each of the ten Generals, including the "one in charge of the symmories, who registers the trierarchs, conducts their challenges to exchange (*antidoseis*) and introduces into court their adjudications" (trans. Rhodes). Our speaker says it is the "Generals" who are in charge of the exchanges (cf. 42.14 and 16). Probably the Generals (plural) register the exchanges for the Three Hundred who are to be "advanced contributors" for the tax, and the single General mentioned in the *Ath. Pol.* holds the exchanges for the trierarchies. See Rhodes 1981: 681 n. 57 and Gabrielsen 1994: 192.

any mortgage pillars (*horoi*) had been set on the property (42.5).[13] Then he sealed the buildings and asked Phaenippus to accompany him to his property; details of that visit are omitted—presumably Phaenippus reported them in his own oration (42.6). The speaker then describes how he tried to find out where the threshed grain was stored on Phaenippus' farm; he set guards on the property who were to stop the carrying off of wood (to prevent either its concealment as potential revenue or its actual sale, 42.6–7).

Matters for complaint arose: the speaker claims that Phaenippus later removed the seals; took away wood, grain, and wine (42.9, 19, 26); and fabricated mortgage pillars on the property (42.9, 26, 28–29); moreover, he handed in the inventory neither at the lawful time nor on a later, mutually agreed upon date (42.11–12).[14] He himself had to hand in his inventory before receiving one from Phaenippus (42.14). The latter, for his part, complained that the speaker's inventory was unlawful: he had omitted his shares in the mining concessions (42.17). It seems that both men delivered their complaints to the Generals, who then initiated the adjudication (*diadikasia*) that is now underway. The panel of judges was to assess the value of the estates of the two men and decide which of them should carry out the liturgy (42.4 and cf. Isoc. 15.5).

Analysis of Procedure: If Exchange Fails, Adjudication Follows

On the basis of the speaker's narrative and details elsewhere in the works of the orators, we can infer that the procedure of *antidosis* could be complete in itself (initiation before the appropriate magistrate, acceptance of the challenge to exchange property, oath, inspection of properties, sealing of buildings, production of inventory, final agreement to the exchange) or it could lead to a second phase, the adjudication hearing, as depicted in

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[13] *Horoi* are stone markers that were used to stake out property being used to secure a loan; see further the Introduction to Dem. 41, n. 5, and Dem. 41.6n and 42.5n.

[14] Delay provided an opportunity to see what the other estate was worth before calculating the value of his own.

this speech.[15] Presumably, if inventories were executed fairly (and friends or mediators might be called in for assistance)[16] and the men were in agreement about their properties, they would make the exchange, and the challenger would carry out the liturgy aided by his newly acquired estate. The magistrate would not have been involved except at the beginning of the procedure; the exchange would basically have been a private matter. Such an amicable exchange may have been a rarity.

More likely, after an initial acceptance of the challenge to exchange properties, the men would begin to quarrel about what exactly constituted their respective properties. As in this speech, the challenged man might refuse to hand over an inventory or he might present one that was obviously misleading; the challenger, for his part, might present one that appeared unlawful. In such cases, one or both men could return to the magistrate and ask for an adjudication (*diadikasia*).[17] Opportunity for an exchange of property lapsed once the adjudication hearing was set in motion.[18] It is clear from the argumentation and presentation of evidence in Speech 42 that the case will be judged on the basis of the inventories; hence, the speaker has defended the integrity of his inventory against the complaints of his opponent; moreover, he describes Phaenippus' dallying as illegitimate and presents the latter's inventory on three occasions, arguing that particular parts are false. Presumably, Phaenippus will argue similarly against the speaker's inventory. It is the main issue in the adjudication.

During the nineteenth and early twentieth centuries, scholars

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[15] See Gabrielsen 1987 for detailed depiction of the two main stages.

[16] Lys. 4.2.

[17] There is little evidence on this point. In 28.17, Demosthenes reports that he accepted an exchange (i.e., he agreed to begin the process), but to obtain a *diadikasia*, he "shut out [the challenger from his house]" or "obstructed [the procedure]." The passage has led to different interpretations of the capacity of the challenged man to institute a *diadikasia*; see Gabrielsen 1994: 246 n. 23.

[18] The speaker's remark in 42.27 ("I allow my mother to have a share of my property, whether I am to have Phaenippus' or my own") is misleading; the opportunity for exchange is over.

argued fiercely whether *antidosis* in the fourth century still concerned an exchange of property between two men (as presented here) or had become a fiction for an exchange of liturgical status.[19] Those who support the position that property truly was exchanged or could be the object of exchange have usually cited passages from the orators.[20] Procedural details in Speech 42 that have not been given much attention are decisive for that same view, viz., that the inspection and sealing of buildings were *lawful* components of the procedure of exchange (42.8). There can be no legal rationale for those activities unless a challenge to an exchange of *property* has been accepted. In the first place, by allowing the men access to each other's property and the right to seal buildings, the law signals that the properties are being readied for entry by a new owner; for the duration of the procedure, each property is in the quasi-possession of the other owner.[21] Second, inspection and sealing in the presence of witnesses allowed aid to the disputants in the event the exchange led to a *diadikasia*: autopsy dated by the sealing of buildings provided a touchstone for the inventories.

The inspections, witnesses, and inventories of the first stage (the *antidosis*) would be available for the second (the *diadikasia*).[22] Moreover, without access to autopsy, the disputants' evalu-

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[19]See Goligher 1907: 481–515 for discussion and full bibliography. More recently, Gernet 1957: 72–75 supports the view that exchange concerned liturgical status; Gabrielsen 1987: 7–38, the view that it still concerned property.

[20]E.g., Lys. 4.1; 24.9; Dem. 20.40, 21.78, 28.17, and 42.19 and 27.

[21]Cf. Menander *Aspis* 356–359, where Smicrines is imagined as sealing off the house of an *epiklēros* ("heiress") to protect its contents from thieves and intruders while he awaits the outcome of the adjudication hearing at which he expects to be awarded both the house and the girl. See Scafuro 1997: 341–344.

[22]Observe that if a person refused both the liturgy and the exchange of property, he would have no legal right to inspect property belonging to someone else and to seal his buildings. This indicates that refusal of both options during the process of *antidosis* was not permitted. This point is of some importance, because the speaker never tells us that Phaenippus agreed to the exchange.

ations of each other's inventories would be entirely frivolous. Accordingly, the right to inspect and seal buildings stemmed from the acceptance of the challenge and anticipated an exchange of properties. Unknown is whether, from its historical inception, a challenge to exchange could be followed by a *diadikasia*.[23] Once streamlined into the procedure as a second stage, however, the availability of the *diadikasia*, the initiation of which quashed further pursuit of exchange, may have rendered the reality of an exchange of property more remote: an unwilling recipient of a challenge would always be able to move from Stage One (*antidosis*) to Stage Two (*diadikasia*) by complaining to the magistrate. Nonetheless, the ultimate aim of the second stage will have been the same as the first: to ensure that the wealthier man carried out the liturgy.[24]

Date and Authorship

The speech cannot be precisely dated. The speaker's depiction of the inflated prices for grain and other farm products suggests one of the years in which Athens suffered grain shortages (335/4, 330/29, or 328/7);[25] his allusions to mining reversals suggest the late 320s.[26] Consideration of the age of Phaenippus' adoptive father Philostratus loosely corroborates a date for the speech ca. 330.[27]

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[23]The date when exchanges were first used is not known; *IG* I^3 254, line 5 (440–415?) mentions an exchange on the deme level (Ikaria) in regard to the appointment of *chorēgoi* (see Whitehead 1986a: 215–217 and Gabrielsen 1987: 29–30); for a Solonian origin, see 42.1n.

[24]See Gabrielsen 1994: 93–94.

[25]See Isager and Hansen 1975: 200–202.

[26]See 42.21n.

[27]Philostratus (*APF* 14734 [A]) was Phaenippus' maternal grandfather and appears to have lived a very long life. As a young man, he was a friend of Lysias (Dem. 59.22); he took part in the prosecution of Chabrias in 366 (Dem. 21.64; Diodorus Siculus 15.76); he was trierarch with his own father in 359/8 (*IG* II^2 1622, line 773) and dedicated a tripod upon his choregic victory at the Dionysia before 357 (Dem. 21.64; Chabrias, who died in 357, is

Demosthenes' authorship of the speech was denied in antiquity (Libanius Hypoth.) and modern scholars have added reasons.[28] Stylistic deficiencies, together with the lateness of so trivial a speech (when Demosthenes is thought to have stopped composing private speeches), strongly suggest that the speech is not by him. Nonetheless, nothing rules out acceptance of the oration as an authentic composition for the court in the late fourth century.

42. AGAINST PHAENIPPUS, CONCERNING AN EXCHANGE

[1] May many blessings fall, judges, first, upon all of you and then, too, upon Solon, who set down the law about exchanges.[29] For if he had not clearly defined for us what step must come first for those who have embarked upon an exchange,[30] and what second, and so on in order, I don't know where the impudence of Phaenippus would have led. Even as it is, although the law prescribes all the steps, Phaenippus totally disregarded its just provisions. First, instead of giving me the declaration [*apophasis*] of his property within three days after taking the oath as the law

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still alive at the time of Philostratus' victory); he gave testimony in the trial against Neaera in 340 (Dem. 59.22). At the time of this oration, he has been dead for an indefinite period, which we know because Phaenippus is said to have been enjoying the profits of Philostratus' estate as well as his natural father's "for long enough a time" (42.22). The last datum accords with a date for the speech anytime during the years 335–327.

[28] See Schaefer 1858.3.2: 284; Blass 1893: 507–509.

[29] This is the only evidence for Solon's authorship of the law. That an archaic (even pre-Solonic) law regulated gift exchanges is not unlikely (*antidosis*, the word for "exchange" literally means "in return for a gift"); nonetheless, insofar as all our fourth-century sources depict an *antidosis* as an exchange of property as an alternative to carrying out a liturgy, the procedure cannot predate the institution of liturgies for festivals, trierarchies, and tax collection, which probably dates to the fifth century. Orators commonly attribute Athenian laws to Solon, even some we know to have been enacted much later. See below 42.18n.

[30] For the wide meaning of the terminology of "exchanging," see the Introduction, n. 8.

requires[31]—or if that wasn't to his liking, then at least by the twenty-fifth of Boedromion,[32] the date that was appointed at his request [2] and on which he agreed to hand over the declaration—he met neither of the deadlines; no, scornful both of the law and of me, he handed it over in the second month, only two or three days before he entered the courtroom; in the meantime, he kept himself out of sight. Second, instead of leaving the seals I had put on the buildings untouched, he went to the country, unsealed them, and carried off the barley and other goods, as if the law has granted him permission to act however he likes and not as is right. [3] As for me, judges, nothing would give me greater pleasure than to see myself prospering as before and maintaining my position in the Three Hundred.[33] But as I not only shared in the misfortunes common to all men who were involved in the mining industry but also met with great reverses in my private affairs, I've lost my property, and now, to cap it all, I'm beholden to pay three talents to the city, a talent for each share (for I, too—would it had never been so!—was a partner in the confiscated mine).[34] I'm therefore compelled to try to appoint a man in my

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[31]The term *apophasis* is used consistently throughout the speech (nineteen times) for a document that is a "declaration" or "inventory" of property; the cognate verb is used (eight times) of the act of citing items relevant to that document; I translate the noun as "declaration" and the verb as "declare." Oddly, the term *apographē* (which I translate as "inventory") is used for what is probably the same document in 42.16; the cognate verb is used in 42.16, 24, 27, and 29 (which I translate as "list" or "register"). See 42.16n.

[32]Boedromion was the third month of the Attic year; its beginning corresponds to the second half of our September. The manuscripts give the date as the "sixth"; editors have emended the text by adding a modifier that changes the date to "the twenty-fifth" and so corresponds with the second date given in 42.12 below.

[33]See the Introduction at nn. 1–6.

[34]It is unclear whether there were three partners in the mine, and the speaker has gotten stuck with paying the penalties not only for himself but also for two (possibly absconded) partners (see MacDowell 2006), or whether he had three shares in a mine consisting of more than three shares distributed among an unknown number of partners. Hopper 1953: 225 sug-

place who is not only wealthier than I am now but even wealthier than I was before and who has never performed a single public service in your interest nor even paid a tax to the city. [4] I therefore ask all of you, judges, if I prove that Phaenippus here has transgressed the just provisions of the law and is richer than I am, to come to my aid and appoint him as my replacement in the Three Hundred. For this is the reason why the laws initiate exchanges every year: it's not the norm for many of our citizens to maintain a continuous and unbroken course of prosperity. But I'll explain to you from the beginning the circumstances surrounding the exchange.[35]

[5] Judges, on the second day of Metageitnion,[36] the Generals were setting in motion the exchanges for the Three Hundred. Then it was I summoned this man Phaenippus in accordance with the laws. After I issued the summons and collected some relatives and friends, I journeyed to the deme Cytherus to his outlying farm.[37] And first, after I led them round the farm in a circle of more than forty stades,[38] I pointed out and called upon them to

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gests that the mine was confiscated because it had not been officially registered. Usually unregistered mines were subjected to the procedure of *apographē* or "denunciation" (see Osborne 1985), and the penalty was the confiscation of the mine. That there is an additional and very heavy penalty here suggests to MacDowell 2006 that a different procedure was involved, a *graphē* or "public indictment."

[35] See the Introduction, n. 8 on the terminology of "exchange."

[36] Metageitnion is the second month of the Attic year; its beginning corresponds to the second half of our August. Note that Phaenippus does not give his first oath until the eleventh day of Boedromion, the following month (42.11); the speaker will have already visited his farm and sealed the buildings.

[37] *Eschatia* is the term translated here as "outlying farm." It refers to a "boundary estate," that is, one at the edge of the sea or at the foot of the mountains. The speaker appears to focus on this one piece of property, although in 42.21 we learn that Phaenippus "is reaping a profit from two estates."

[38] One stade is a distance of 193 yards or 176 meters. Scholars have offered different estimates of the size of the farm, usually between 700 and 1,000 acres. de Ste. Croix 1966 argues that it may have been considerably

witness, in the presence of Phaenippus, that there was not a single pillar on the farm, and I asked him, if he claimed there were any, would he say so immediately and point them out, so that a pre-existing debt might not come to light later on?[39] [6] Then I sealed the buildings and bid him go to my property.

After that, I asked him where he stored the grain that had been threshed; for, judges—I swear this by the gods and goddesses—there were two threshing floors there, each just short of a *plethrum*![40] He answered me that some grain had been sold but the rest was stored inside. [7] Finally, to cut the story short, I assigned some men to keep guard inside and—by Zeus!—I forbade and barred the drivers from carrying wood outside the farm (for in addition to the rest of Phaenippus' estate, judges, this timber is also a considerable source of revenue for him: six asses transport wood throughout the year, and the man takes in more than twelve drachmas a day). So, having forbidden them, as I was saying, to touch the wood and having urged Phaenippus to appear at the sacrifice in accordance with the law,[41] I left and returned to the city.

[8] First, now, I'll supply depositions to support my statements, and then you'll hear the whole truth about the rest. For you'll discover that this Phaenippus from the very first day did nothing at all that was just. I sealed the buildings inasmuch as the law has granted me that right; my opponent opened them. And while he admits he removed the seal, he denies he opened the door—as if people remove seals for any other reason than to open

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smaller; he stresses that the area of the circle (for which we have been given the circumference) depends on contour; the speaker is misleading his listeners by giving such a measurement, because it does not permit its area to be deduced.

[39]The pillars he is looking for are "mortgage pillars" (see the Introduction of Speech 41n). Any debt marked by a pillar must appear in Phaenippus' declaration (*apophasis*). On the terminology, see Gabrielsen 1987: 18.

[40]A *plethrum* is about 100 feet; probably this is the length and not the area of the threshing floor.

[41]The sacrifice may have accompanied the first oath, which was given before the declaration was handed in (42.12 and 17).

doors! [9] And then I forbade the carrying out of wood; he carried out wood every day—except for the day on which I gave the order not to! No debt whatsoever was owed against the property; now he declares there are many. Simply put: he does whatever he likes and not what the laws command. [*To the secretary*] Read the depositions, first those about the mine,[42] then the others as well.

[DEPOSITIONS]

[10] Well then, you've heard, fellow Athenians, from both me and the witnesses, the wrongs Phaenippus did me, starting from the first day after the exchanges.[43] His subsequent activities, however, have no longer been directed against me alone but also against the laws, whose staunch defenders you all should be. [11] Indeed, he had sworn on the eleventh of Boedromion to declare [*apophainein*] his property accurately and fairly; moreover, the law explicitly requires a man to hand over the declaration within three days of swearing the oath. Nevertheless, he approached me in front of the lawcourts in the company of Polyeuctus of the deme Crioa and some other men as well, and first asked whether I would meet with him for a reconciliation, for he would do everything, he said, that was just by me. Next, he asked whether I would postpone the declaration of the property for just a few days, for he was aware, he said, of my circumstances. [12] Since I believed that decent and peace-loving Athenians do not rush headlong into courtrooms, I was persuaded (for why should I prolong the tale?) to schedule a meeting about a settlement for the twenty-third of Boedromion and the declaration for the twenty-fifth. And although he won both these concessions from me, Phaenippus didn't appear on either of those days; instead, he comes before you as a man who has broken not

[42] Perhaps the depositions attested the speaker's debt of three talents regarding the confiscated mine (42.3).

[43] The speaker uses the plural to refer to the numerous "exchanges" initiated and registered with the Generals on Metageitnion 2; see above, 42.5n and the Introduction, n. 8.

one but two laws: the one requiring a man to declare the property within three days of swearing the oath, and the other stating that reciprocal agreements—which are made in the presence of witnesses—be valid.[44] [13] And yet, judges, all of you know that the day prescribed by law and the day agreed upon by disputants are equally valid. For while the thirtieth day has often been written into the laws,[45] not only do we, if we decide upon a different day between ourselves, keep the appointment, but in all the offices, the magistrates also postpone cases and decisions for the disputants when they have come to a mutual agreement. And should any man think that the mutual agreement must be voided, you would hate him as an overarching swindler.

[14] Well then, just as though the law enjoins a man to breach each and every agreement, from that day on which Phaenippus made the agreement to meet for a settlement and to give me the declaration of his property and to get one from me—he never showed up at all! As for me, when I saw that he was paying no attention to me or even to the laws, I gave in my declaration at the office of the Generals;[46] he, on the other hand, as I said a little while ago, gave me a document only a day or so ago, desiring only that he should seem to have handed over the declaration but I should have no use of anything he had written there.

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[44]The law that makes agreements valid is paraphrased with slight variations at Dem. 47.77, 56.2; Hyp. *Athen.* 13; it is to be read to the court (but is not preserved) at Dem. 47.77 and 48.11. It is uncertain what legal remedies were available for upholding such agreements; for discussion, see Todd 1993: 267; Scafuro 1997: 128–129; for full refs, see Pringsheim 1950. In Oration 48, the plaintiff sues the defendant Olympiodorus for breaching an agreement with an action for damages (*dikē blabēs*).

[45]We have scant evidence for laws with thirty-day intervals between one phase and the next. The law cited in Dem. 24.63 imposes a thirty-day limit for holding men in custody who have been put there by the Council's denunciation; Dem. 21.47, the law on *hybris*, requires the *Thesmothetai* to bring cases into court within thirty days from which the indictment was submitted; see MacDowell 1990: 266–267.

[46]The process of *antidosis* seems to have broken down officially at this point; presumably, the two declarations should have come in together.

[15] But, judges, you shouldn't grant more to those who think their monstrous conduct is above the law—otherwise you'll encourage many men to mock the just provisions of the laws; instead, you should help those who think that the voice of the law is your voice and that the appointed day is for the benefit of those who have been subjected to wrongs, not for those who have committed them! [16] [*To the secretary*] Read the depositions concerning the statements I have just now made and also the laws.

[DEPOSITIONS. LAWS]

Well then, judges, after Phaenippus treated me this way, I had this inventory [*apographē*] registered with the Generals.[47] Read it.

[INVENTORY (*APOGRAPHĒ*)]

[17] In the name of the gods and divinities, how else, judges, is a man to prove to you that Phaenippus is liable to the laws that have been read except in the very way that I'm proving it now? Nevertheless, Phaenippus complained in response[48] that I didn't

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[47] After the speaker has consistently used *apophasis* for an inventory (translated in this text as "declaration") throughout the speech (see 42.1n), his use of the noun *apographē* here and its cognate verb (also in 42.24, 27, and 29) has troubled commentators, who have ascribed different meanings to the terms. Gernet 1957: 83 thinks *apographē* here refers to a complaint made by the speaker (cf. Lys. 9.3 and 29.1). Lipsius 1905–1915: 593 emends the text, chops off *apo-* and gives us *graphē*, an indictment. A more satisfactory explanation is to accept *apographē* as referring to the speaker's inventory that now, when he has the document put into evidence, he calls by a (perhaps more formal and) different name. He has just mentioned the occasion of his handing it in, and this is a likely place for it to be read; if he does not put it in evidence here, then he does not put it into evidence at all—which is unlikely. The inconsistency of terminology is logically inexplicable, but the *apographē* here and the *apophasis* ("declaration") in 42.25 must refer to documents that are inventories.

[48] The verb translated here "complain in response" (*antigrapsasthai*) registers Phaenippus' nonacceptance of the speaker's inventory, and so there can

declare [*apophainein*] the property lawfully—so easily do men like him tell lies in your presence! And he cites the oath I swore before handing in the declaration [*apophasis*], charging that I promised to declare all the rest of my property with the exception of the mining concessions—as if to swear an oath in accordance with the laws was something to complain about! [**18**] But you know the law, judges (for you made it!), which explicitly says this, "And men who are engaged in an exchange with one another, whenever they declare their property under oath, are to swear an additional oath, 'I am declaring my property accurately and lawfully, except for shares in the silver mines, all of which the laws have made exempt from taxes.'"[49] [*To the secretary*] [**19**] But read instead the law itself. No, stop a moment, I beg you. For just as once before I offered a challenge to Phaenippus, I also do now, judges: "I offer freely and surrender, along with the rest of the property, my shares in the silver mines as well, provided that he hand over to me the estate by itself free of encumbrances, as it was when I first went there with witnesses, and that he restore to it the grain, the wine, and all the rest that he took away from the buildings after he unsealed the doors.'"[50]

[**20**] [*To Phaenippus*] Why do you go on talking and shouting? Yes, by my own toil and physical labor, Phaenippus, I once amassed great profits from the silver mines; I admit that. And now, except for some small portion, I have lost everything. But I

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be no simple exchange of property. If the Generals accept his complaint, adjudication must follow.

[49]Gabrielsen 1994: 88–89 suggests that this provision is a late fourth-century amendment to the law on *antidosis* aimed at encouraging prospective investors.

[50]The speaker's challenge here is not the same as the one he offered when he first initiated the procedure before the Generals. It must postdate his visit to Phaenippus' farm and the alleged unsealing of the buildings; moreover, it offers Phaenippus, as a gift, his shares in the mines—an offer not permitted in the procedure before the Generals. Accordingly, either this is a later, private challenge, offered to entice Phaenippus to settle without a hearing in the courtroom, or else it is being offered here for the first time. The latter is more likely, since otherwise he would say that he had already made this particular offer. The speaker is grandstanding.

suspect that you, by selling the barley from your estate at eighteen drachmas and the wine at twelve, are a rich man, seeing that you produce more than a thousand *medimnoi* of grain and over eight hundred *metrētai* of wine.[51] **[21]** Ought I, then, to remain in the same class of taxation, if I'm not as prosperous now as I was before? No, for it's not right. You, too, take your turn and for a short period be part of the class of people who carry out liturgies, since men involved in mining have suffered reverses whereas you farmers enjoy a scandalous prosperity.[52] Indeed, you've been reaping profit long enough from two estates, your natural father's, Callippus', and the one belonging to your adoptive father, Philostratus the politician,[53] and you've never done anything for these men here.[54] **[22]** Yet my father left behind an estate worth only forty-

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[51]One *medimnos* (a dry measure) was a little less than two bushels; one *metrētēs* (a wet measure) was a little more than nine gallons. de Ste. Croix 1966: 111–112 is rightly skeptical of the speaker's figures: how, he asks, does he know them? Moreover, since Phaenippus is said to have listed amounts of barley and wine, which were not even a tenth part of the speaker's figures (42.24), who is the listener to trust: Phaenippus' sworn statement or the speaker's claim, which is not made under oath?

[52]Prosecutions related to mining mentioned in Hyp. *Eux.* 34–36 (a speech dated between 330 and 324: Whitehead 2000: 156–157) indicate that the silver mines at Laurium were flourishing during the 340s and 330s. The speaker mentions the "mining reverses" as if they are recent and familiar to the judges; so perhaps they are very recent and so consonant with a date for the speech in the early 320s.

[53]Philostratus was Phaenippus' maternal grandfather (42.27 and see the Introduction, n. 27). The terminology used here (*tou poiēsamenou se*) suggests that Philostratus adopted him while he was still alive. An adopted son was not permitted to inherit from his natal father and thus accumulate two patrimonies (Is. 9.33); how, then, is it possible for Phaenippus to inherit from both Callipus and Philostratus? Harrison 1971: 93–94 n. 2 suggests that in spite of the speaker's language, Phaenippus may have been adopted posthumously (see the Introduction to this volume, II.3); possibly "by an exception, the law allowed the son of an *epiklēros* ['heiress'] who was thus adopted into her father's house to remain also his father's heir." More likely, if the speaker's report is true, Phaenippus' double inheritance is an irregularity.

[54]I.e., the members of the jury as representative of the people of Athens.

five minas for each of us, my brother and me, from which it's not very easy to eke out a living, whereas your fathers were masters of so much wealth that each dedicated a tripod when victorious as chorus producer at the Dionysia.[55] Really, I'm not resentful, for men of wealth should make themselves useful to their fellow citizens. But just show us one penny[56] that you've expended for the city, you, the man who has inherited two estates that once provided liturgies! [**23**] But you can't, for you've learned how to conceal and to dodge and to do anything to avoid carrying out a liturgy for your fellow citizens here. But I'll show that I've spent much, I, the man who inherited only a small estate from his father. First, [*to the secretary*] please read the law that exempts men from declaring any mining shares and then the challenge; after that, read the depositions that prove Phaenippus has inherited from two estates that formerly provided liturgies.

[LAW. CHALLENGE. DEPOSITIONS]

[**24**] By one trait alone could a person show that Phaenippus here has been eager to gain public honor: he is an excellent and ambitious horse-breeder, inasmuch as he is young and rich and strong.[57] What's a good proof of this? Having sold his war-horse, he has stepped down from his horses,[58] and as a replacement for that—at his age—he has bought a chariot for himself so he need not travel on foot! Such a delicate man! This chariot, it's true, has been listed by him in the inventory, but as for the barley and the wine and the rest of the produce from the estate—not even the

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[55]The practice was frequent; indeed, a "Street of Tripods" in Athens was adorned with them (Pausanias 1.20.1).

[56]Lit., "one copper coin"—an eighth of an obol, which in turn was a sixth of a drachma—and so, a very small piece of change.

[57]Breeding horses was a sign of wealth, and owning chariots was a sign of luxury; Alcibiades was renowned for both (Plut. *Alcibiades* 11; Thuc. 6.16.2).

[58]de Ste. Croix 1966: 114 n. 17 reads "cavalry" (*hippeōn*) instead of "horses" (*hippōn*) and has Phaenippus giving up membership in the cavalry, perhaps by claiming insufficient property or physical incapacity. But buying a chariot signals wealth and not its absence, and there is no sign that Phaenippus is physically incapacitated.

tenth part of all that! [**25**] Then is it fair to exempt him—a man so public-spirited and generous with his property and his person? No, far from it! For it's the duty of fair and decent judges, in regard to those citizens who are full of goodwill when they are prosperous, to relieve them from performing liturgies and from inclusion in the Three Hundred whenever that relief is needed; but as for those men who consider any expenditure for the common good a loss, it's your duty to enter them among the advance-contributors[59] and not allow them to take to their heels. Now read the deposition first and then his declaration [*apophasis*].

[DEPOSITION. DECLARATION (*APOPHASIS*)]

[**26**] Let these matters be. And yet, judges, after Phaenippus carried off many of the goods that had been stored inside—since he had opened up the sealed parts of buildings, as you have heard from the witnesses—and after he left behind only so much as he liked, he handed in the declaration of the property in the second month. Nevertheless, let these matters be. [*To the secretary*] Read from the part that begins, "On this property I owe the following sums. . . ."

[DECLARATION]

[**27**] Stop. This Aristonoe, judges, is the daughter of Philostratus and the mother of this fellow. He says that a debt is owed to her, the dowry—of which the laws make him proprietor;[60] he lies

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[59]The "advance-contributors" (*hoi proeispherontes*) were the members of the Three Hundred; see the Introduction at n. 2.

[60]Aristonoe apparently returned to the house of her father Philostratus upon the death of her husband Callipus; her son is responsible for maintaining her from her returned dowry. Can that dowry be considered a debt owed her from the estate? Harris 2006 [1993]: 232–233 argues that two methods of calculating dowry are attested on Attic *horoi*, and Phaenippus and the speaker follow those different methods: "If the dowry was considered a gift, its value could not be accounted as a debt against the husband's

and manipulates the declaration unjustly. For why is it, Phaenippus, that while my mother dwells in my house and is alive and has brought a dowry along with her, I don't list [*apographein*] the dowry as a debt owed to her and I don't try to trick the judges, but I allow my mother to have a share of my property, whether I am to have Phaenippus' or my own? Why? Because the laws require this, my good fellow. But you do everything contrary to the laws. [*To the secretary*] Read further.

[DECLARATION]

[28] You hear, judges. He alleges he owes on his land a talent jointly to Pamphilus and Pheidoleus of the deme Rhamnus and four thousand drachmas to Aeantides of the deme Phlyus and fourteen minas to Aristomenes of the deme Anagyrus. Why then, Phaenippus, when I was questioning you in the presence of witnesses, whether you owed anything on the estate, and when I kept asking you to show me a mortgage pillar if there were one anywhere on the property, and when I kept entreating you to keep sham creditors from appearing later on, why didn't you declare a single debt at that time, and why, after you handed in the declaration to me in the second month (although the law requires you do this within three days), have creditors and debts exceeding three talents now shown up? **[29]** Because, my good man, you are contriving nothing else but that your personal debts should be equal to the amount of my public debt to the city. I'll now prove beyond a doubt that you're lying, Phaenippus, and that you come before these men as a perjurer. Secretary, please take the deposition of Aeantides and Theoteles now, the men to whom he has listed himself as being indebted to the amount of four thousand drachmas; he was lying and he paid them back long ago, not willingly, but after a judgment had been given against him. Read.

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property. On the other hand, if the dowry was considered a loan, it created a debt and its value could be deducted from the total value of the husband's assets." According to Harris, Phaenippus has apparently followed the second, less-attested method.

[DEPOSITION]

[30] Well then, judges, given that the man has made his declaration in so blatantly unfair a manner and has shown no respect, neither for any law that limits the time period for making the declaration nor for any private agreement to which we accord the same weight as we do the laws, and given that, besides all this, he opened the seals on the buildings and carried out the grain and wine from inside, and has, additionally, after being challenged to an exchange,[61] sold chopped timber worth more than thirty minas, and, to cap it all, has contrived sham debts for the sake of the exchange, will you vote that this man has made the declaration justly? In no way, judges! [31] For where will a person turn if he fails utterly of your verdict when rich men have the advantage in pleading cases before you, men who have never been of any use to you, who produce great quantities of grain and wine, and who dispose of these at three times their former price? Don't let this happen today! But just as you have given public aid to all those who work in the mining industry, so too aid me now in my private crisis. [32] For if I were your slave and not a citizen, and if you were to see my industriousness and goodwill toward you, you would have relieved me of my expenditures and would have approached one of the others who was running away.[62] In the same way, as soon as I shall have paid the penalty of three talents and have recovered my losses, you may give relief to someone else in distress and come back to me. But now release me, I beg all of you, judges, and I ask you, since I have spoken with justice, to come to my aid and not allow me to be pushed about by these men.

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[61] Literally, "after the *antidosis*," but clearly the speaker refers to an initial stage in the procedure; see the Introduction, n. 8.

[62] This nearly nonsensical statement is one singled out by Schaefer 1858: 284 as an example of the author's absence of good taste. MacDowell 2006 offers a speculative interpretation.

43. AGAINST MACARTATUS

INTRODUCTION

Hagnias II of the deme Oeum Cerameicum was a wealthy Athenian citizen who died childless after setting out on an embassy perhaps thirty years or more before the oration *Against Macartatus* was delivered.[1] His estate passed through numerous hands before the present hearing: (1) first to an adopted daughter who died; (2) then to a matrilinear brother who was awarded the estate on the basis of Hagnias' alleged will; (3) next, to the speaker's wife Phylomache II, who contested the will before a court and claimed the right to succeed as a first cousin once removed (and this, only after her father Eubulides II had started up a claim as Hagnias' first cousin but died before the case reached court); (4) thereafter to Theopompus, a second cousin who wrested the estate away from Phylomache II in a court battle in which he and fellow claimants impugned Phylomache's pedigree: she, so they claimed, was really a second cousin once removed and therefore lay outside the inheriting circles; (5) and finally to Macartatus II, who entered the estate peaceably as heir to his father Theopompus—but not for long.[2]

The estate was still adjudicable under a rather flexible statute of limitations that permitted claims against each new successor, provided that five years had not passed since his entrance to the es-

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[1] The date of the oration is discussed at the end of the Introduction.

[2] Not all the events abbreviated here are reported in Dem. 43; some appear in Is. 11.

tate (Is. 3.58; cf. 43.16 below). In this case, the speaker (Sositheus)[3] pleads in behalf of a minor (Eubulides III), the natural son of the speaker and his wife Phylomache II but now adopted posthumously to his wife's father Eubulides II so as to become (the speaker claims) a first cousin once removed to the long dead Hagnias II. Sositheus disputes the claim of Macartatus son of Theopompus to possess the estate of Hagnias, claiming that the minor (Eubulides III) is more closely related to the deceased Hagnias than was the *former* possessor, Theopompus, father of Macartatus. The judges who heard the case were to decide which of the two parties had the better claim to his estate.

The relationships among the competing claimants are complicated and intricate. The law of intestate succession, which sets out who may inherit in the absence of legitimate sons and a genuine will, is bewilderingly vague. One particularly vague clause in the same law is important to the case: "And if [kinsmen] are absent on the father's side [of the deceased] as far as the children of cousins, those on the mother's side are entitled to inherit in the same way." Who are the "children of cousins": are they "first cousins once removed" or "second cousins"? The answer makes a difference to one's understanding of the case—and surely made a difference to the judges who voted in this hearing and in the earlier one in which Theopompus was awarded the estate. Unfortunately, much in the oration that we would like to know is left unsaid by the speaker and important issues raised by him are contradicted by Theopompus, the speaker of Isaeus 11 who delivered a speech in an earlier but related trial. Finally, modern critics generally consider the speaker dull and tedious. In the face of so many difficulties, a reader may well ask, why read this oration?

At least four features of the speech are worthy of notice: (1) its information concerning inheritance strategies; these can be formally executed (e.g., via the exploitation of marriages of *epiklēroi* ["heiresses"] and of posthumous and testamentary adoptions,

[3]Sositheus is not named in the course of the speech except in witness testimony; Libanius designates him as the speaker in his summary, perhaps having culled the name from a title that has not been transmitted to us.

even of girls) or informally contrived (e.g., the collusive schemes ascribed by the speaker to Theopompus and kin against Phylomache II); (2) its depiction of the "house" of Buselos dividing into the separate families of his five sons; (3) its portrayal of the ways a woman (Phylomache I) might be identified by kin in the absence of birth records; and (4) its wealth of witness testimony (a prosopographical treasure trove) and laws, some of which may go back to Solon: parts of nine laws are cited and read to the court, and for one of them (the law on homicide), there is an extant inscribed text from the late fifth century for comparison.

For background on these issues, readers should consult the Introduction to this volume, especially II (for posthumous adoption), III (for phratry introductions), IV (claiming an estate), and V (the law of intestate succession). Laws are addressed in the notes to the oration.

Hagnias II's Kinsmen

Both Sositheus and Theopompus (the speaker of Isaeus 11) were descendants of a man named Buselus, who had five sons:[4] *Hagnias I* (father of Polemon and Phylomache I and grandfather of Hagnias II), *Eubulides I* (maternal great-grandfather of Sositheus and paternal grandfather of Eubulides II, the father of Phylomache II), *Stratius I* (paternal grandfather of Theopompus), *Cleocritus*, and *Habron*. There was much intermarriage among the descendants of Buselus. Polemon married the granddaughter of his uncle Stratius I; thus, he was his wife's first cousin once removed and she was second cousin to her own son, the deceased Hagnias II. Sositheus' wife Phylomache II was an *epiklēros*, and Sositheus and she were first cousins twice removed; their daughter married the son of Sositheus' brother.

Sositheus had overseen the posthumous adoption of his son, the young claimant (frequently referred to as "this boy here") to his deceased father-in-law, Eubulides II; the boy became Eubu-

[4]Consult the *stemma* at the end of this Introduction and see *APF*, no. 2921 for discussion of members of the family of Buselus.

lides III son of Eubulides II. As mentioned in the Introduction to this volume (II.3), it has been argued that only those persons were adopted posthumously who would have been, without the adoption, the intestate heirs of their adoptive fathers.[5] This is so in the case of the adopted son of Eubulides II: as the (natural) son of an *epiklēros* (Phylomache II), the boy, along with his brothers, would have inherited his maternal grandfather's estate. The posthumous adoption may have consisted simply of the boy's introduction into his grandfather's phratry (43.82); later, when he turned eighteen, he would be introduced to his grandfather's deme.

Adoption into the "house" of Eubulides II so as to become his son (rather than grandson) served numerous ends: it not only made the boy sole heir to the estate of Eubulides II while at the same time increasing the portions of Sositheus' estate for his other sons,[6] it also made the boy a potential heir to the estate of Hagnias II. He now became the son of a first cousin to Hagnias II (a "first cousin once removed") and thus stood in the same relation as did his natural mother and in fact excluded her; more significantly, he now bore a closer relationship to Hagnias II than did Theopompus—that is, if his "new" (via adoption) grandmother Phylomache I (the mother of Eubulides II) was really the full sister of Polemon, the father of the deceased Hagnias II![7]

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[5]Rubinstein 1993: 44 argues that usually an adjudication hearing (*epidikasia*) was necessary to determine the intestate heir for the purpose of a posthumous adoption. This was not the case, however, with Eubulides III and Macartatus II, neither of whom was required to undergo such a hearing since each was heir through his mother: "As the son of an *epiklēros* who had been the object of an *epidikasia*, Eubulides III was by law entitled to his grandfather's inheritance without recourse to the People's Court . . . (43.13). And Macartatus II's mother had had her brother's, Macartatus I's, inheritance awarded to her by an *epidikasia*; as her legitimate male descendant, Macartatus II was entitled to take over the property of his uncle without recourse to the People's Court (Is. 11.49)." See the Introduction to Dem. 44, n. 24.

[6]An adoptive son could no longer inherit from his natural father; cf. Dem. 42.21n.

[7]Phylomache I's status is a bone of contention in this case (as in the earlier adjudication); this is evident both in the attention the speaker devotes

Summary of the Speech

The speaker begins with a quick sketch of the estate's history, including the court's award of it to his wife and Theopompus' wresting it away shortly thereafter; he then speaks of the birth of Eubulides III and his adoption to Eubulides II via introduction into the latter's phratry: this last event serves as immediate impetus for the current hearing (3–17). He next provides a lengthy "pragmatic proof," the ultimate aim of which is to demonstrate by law the proximity of the young Eubulides III to Hagnias II.[8] After first presenting a detailed genealogy of the family of Buselus (18–30), he goes on to describe the previous hearings (31–34), Phylomache I's parentage (together with hearsay-witness testimony, 35–41), and Eubulides II's position in the *anchisteia*[9] (together with hearsay testimony, 42–46); he then poses a series of questions and answers to clarify the complex relationships (47–50). This leads to his citation and brief interpretation of the law of intestate inheritance (51–52). He then offers an "ethical proof" that the inheritance rightfully belongs to Eubulides III. He first adduces numerous laws to show obligations conferred on kinsmen; Theopompus and Macartatus, he argues, are not closely enough related to Hagnias to share these obligations (53–67); moreover, Theopompus is a lawbreaker, as is shown by his mutilation of the olive trees on Hagnias' estate (68–71). Sositheus' conduct is far different; he cares for preserving the "house" (*oikos*) of Hagnias and shows re-

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to her position and in the witness depositions. If she was only a half-sister to Polemon by virtue of sharing the same mother, then she loses her place in the "innermost rings" of succession and drops to the outer, maternal rings; her son, Eubulides II, would then be only a second cousin (through his father Philagrus) to Hagnias II, and Eubulides III would be a second cousin once removed (i.e., a son of a second cousin)—the very same degree of kinship held by his opponent Macartatus II.

[8]The division of this speech into a "pragmatic proof" and "ethical proof" follows with modification the outline provided by Thompson 1976: 62.

[9]*Anchisteia* here refers to the circles of kin who are permitted by law to inherit; it can also refer to "the right to succeed to an estate" or "the order of succession."

spect for Buselus; in fact, he is the defender of the dead, as is shown by the adoption of his son to Eubulides II (72–84).

The Legal Case

The estate of Hagnias II had already been awarded to Theopompus (perhaps sixteen years before the current case) and had, after his death, passed to Macartatus II as Theopompus' legitimate son and heir. Now, since a new claimant had come forward, a special law operated: the current possessor (in this case, Macartatus II) must show how the former possessor (in this case, Theopompus) had claimed the property (43.16). Since the latter had won the estate in a similar hearing by claiming that he was the closest kinsman to the deceased in accordance with the law of succession, Macartatus II must demonstrate that Theopompus' title to inherit was still the best: not only better than the claimants' title at the former hearing but also better than that of the claimant coming forward now.[10] Sositheus for his part must show that the claim of Eubulides III is better than Theopompus' had been.

To demonstrate that Eubulides III is now—via the posthumous adoption (which is not contested)—a first cousin once removed to the deceased Hagnias II and therefore the closest kinsman to Hagnias II, Sositheus must show that Eubulides III's "new" (but long dead) grandmother Phylomache I (the mother of Eubulides II), had been a full and legitimate sister of Polemon, the father of the deceased Hagnias II; for only if this were so could her son Eubulides II himself have been a first cousin to Hagnias II, thereby enabling Eubulides III to become by adoption a first cousin once removed on the paternal side of the deceased's family. Much, therefore, hangs on Sositheus' ability to establish the status of Phylomache I.

The status of Phylomache I, however, had been the central is-

[10] This is so even though the new claimant was not yet born when Theopompus claimed the estate or when Hagnias II had passed away. It is odd to us but not odd to them, since the institution of posthumous adoption allowed for reconstructions of descent.

sue in the earlier court hearing that Sositheus (on behalf of his wife) lost to Theopompus. How at the current hearing, so many years later, is Sositheus to establish her status, when she had been born perhaps as many as ninety years before it? Surely there can be no living witness to attest the circumstances of her birth; and in fact, Sositheus presents only second-hand evidence. Why does he think he can get away with using such evidence? What witnesses will his opponent use? More importantly, what witnesses have died since the earlier hearing at which Theopompus won the estate? The death of a crucial witness is likely to have provided a compelling impetus for presenting an indemonstrable claim.

According to Sositheus, there were four claimants for Hagnias' estate at the earlier hearing: (1) Theopompus (second cousin to the deceased Hagnias II on the side of the latter's father), (2) Phylomache II (first cousin once removed to the deceased on his father's side), (3) Glaucon and Glaucus (half-brothers of Hagnias II by the same mother, treated as one party); and (4) an unknown Eupolemus. But in Isaeus 11, Theopompus names only three claimants as appearing at the hearing: (1) himself, (2) Phylomache II, and (3) the mother of Hagnias II. Scholars have reasonably suggested that the unknown Eupolemus may have spoken on behalf of Hagnias' mother.[11] Why does Sositheus omit mention of this lady? (I leave aside here speculation about the motive for Theopompus' omission of the half-brothers' claim; see n. 12) Hagnias II's mother had been the wife of Polemon, and surely she would know whether Phylomache I was truly a full and legitimate sister of her own husband.

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[11] Wyse 1904: 690; Thompson 1976: 27–30 and 67; and MacDowell 1978: 105. Edwards 2007: 174 objects that "Theopompus says she was represented by her legal representatives (*kyrioi*; 11.16) which implies her two sons Glaucus and Glaucon, not a husband . . ." *Pace* Edwards, Isaeus' words do not say that the sons *spoke* in her behalf in court, only that they "decided to bring an action against me [Theopompus]" (trans. Edwards); thus, the sons may be identifiable as the *kyrioi* who wrote her claim (cf. Dem. 44, where a father writes the claim for his natural son), but there is no evidence that they spoke in her behalf rather than in their own. Of course, if her husband Polemon were alive, he would have been representing her in court.

Although by the law of intestate succession, mothers do not inherit from their sons, Theopompus says that Polemon's wife made a claim as mother of the deceased.[12] Why would she make a claim? Athenian women, whether by law or custom, were not permitted to plead on their own behalf or give evidence in the courts,[13] and so Hagnias' mother may have used her claim as a way of bringing "information" to the court.[14] She may have had no intention at all of winning her deceased son's estate but instead been in cahoots with her living sons and perhaps with Theopompus (her first cousin) as well—a "conspiracy," just as Sositheus argues in his speech (43.7–10). She may then have been induced to put forward a claim as a way of providing "testimony" regarding her husband's "sister" before the court (e.g., by saying Phylomache I

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[12]Since Hagnias' mother was the daughter of a first cousin to her husband, she may have made her claim as a second cousin to her deceased son. Theopompus says (at Is. 11.30, a passage notorious for difficulty: see Harrison 1968: 142 n. 2) that if her son had not wanted to make a claim on the basis of kin relationship, then she would have made such a claim (i.e., as Hagnias II's [second] cousin). This may indicate that she had no intention of depriving her sons of the estate when she made her claim as Hagnias' mother; this may also indicate why Theopompus omits mention of the claim made by her sons: it may have called attention to an inequitable strategy for winning the estate.

[13]Whether there was a legal proscription against the appearance of women in court as witnesses or whether their absence as such was a matter of social *mores* (esp. in force for the upper echelons of Athenian society represented by the orators) is not known. Women do not appear as witnesses in the orations, confirming their own deposed statements, nor is there any explicit evidence that a woman's testimony was the subject of an *ekmartyria*, an "absentee-witness statement." Usually, a woman's *kyrios* or other male relative presents her "evidence" (e.g., Lys. 31.20–23, 32.12–18; Dem. 47.61, 55.24–25). Todd 1990: 26 n. 12 sums up the controversy concerning a woman's appearance as a witness for the prosecution in homicide cases; he argues that women and slaves were excluded from giving testimony altogether: "It is not that women and slaves cannot be trusted to tell the truth; but that they cannot sustain the privilege of witnessing because they do not have the capacity to be sued by *dikē pseudomartyriōn*" (p. 28).

[14]See Thompson 1976: 30.

was not born of the same father as Polemon).[15] If so, her advocate may have argued in favor of her claim by impugning the pedigree of Phylomache II with first-hand knowledge of Phylomache I's relationship to her husband Polemon and her "marriage" to Philagrus. Such testimony would have destroyed Phylomache II's claim to the estate. As a claimant, Hagnias' mother would need no witnesses, because she herself had first-hand knowledge, and as one of the litigants, neither she nor her representative Eupolemus was liable to a charge of giving false testimony. If Eupolemus had given some such presentation on behalf of Hagnias' mother, it is no wonder that Sositheus suppresses mention of the woman who had destroyed his wife's claim.

A crucial issue in this earlier case was the meaning of the law of intestate succession (cited at 43.51). Did it allow second cousins into the inheriting circles (the *anchisteia*)—that is, when the law used the phrase "children of cousins (*anepsioi*)" to mark the limit of those who may inherit on the side of the deceased's father before passing to the inheriting circles on the side of the deceased's mother,[16] did the phrase mean

1. "children of first cousins of the deceased"—that is, "first cousins once removed," as Sositheus implicitly maintains (e.g., 43.27), or
2. "children of father's cousins"—that is, "second cousins," as Theopompus uses the phrase (Is. 11.8–12)?

Theopompus won the case by arguing successfully for (2), but the only way to explain in the end that Glaucon and Glaucus (counting as one) also entered a claim is that they must have thought that they could convince the jury that the answer was (1), in

[15] See 43.30n for Sositheus' assertion that Theopompus used no witnesses (43.30) and for Theopompus' assertion that he needed no witnesses because he was making a claim on the grounds of kinship (Is. 11.25) and again for his assertion that suits for false witnessing from the adjudication of Hagnias' estate were still pending (Is. 11.45).

[16] See the discussion of the law of intestate succession in the Introduction to this volume, V.

which case Theopompus would have been excluded. Thus, the answer was probably not simple and known to all. The competing claims of these men can best be explained by a third possibility, that no one really knew what "children of cousins" meant: Theopompus banked on convincing the judges that the phrase meant "second cousins" and Glaucus/Glaucon that it did not. Phylomache's entrance, however, required her removal from contention if the estate was to be awarded to either Theopompus or Glaucus/Glaucon. Hence the appearance of Hagnias' mother as a claimant: her advocate was to provide the pivotal argument and proof used against Phylomache: that her grandmother was *not* her husband's full sister.

The contest was expensive: each new claimant paid a deposit of one-tenth the value of the estate (in this case, perhaps 1,200 drachmas apiece, a hefty sum), to be forfeited if he lost.[17] Possibly there had been an agreement between Theopompus and Glaucus/Glaucon: that the winner would pay the fee for the other as well as for Hagnias' mother, whose "testimony" was crucial for both.

At the time of the present hearing, some eighteen years after the last one, it appears that Eubulides III is the only new claimant. Since Theopompus had won in the earlier hearing and had convinced the judges that "children of cousins" meant second cousins, Glaucus/Glaucon may have decided against trying to convince a new panel of judges that it did not mean that or possibly they were dead. Most likely, Hagnias' mother was dead, and there was now no living "witness" to attest whether Phylomache I was Polemon's legitimate sister and was legitimately married. The way was clear for hearsay testimony—which is brilliantly deployed in 43.35–37 and 42–46: the first set of five hearsay testimonies attest Phylomache I's status as full sister to Polemon (father of Hagnias II),[18] and the second set (perhaps confirmed by the same set

[17] See the Introduction to this volume, IV.4.

[18] The testimonies also say "Polemon had no brother" (43.35, 36 bis, 37 bis). This has caused some scholars concern: since Sositheus has not made any argument about a brother for Polemon, it is possible that testimonies about him are spurious. Drerup 1898: 326–327 suggested that Macartatus might have *invented* a brother of Polemon to whom he was related (perhaps through his mother's kin). But the witness depositions saying that "Polemon

of witnesses who confirmed the first) attest that Eubulides II (the adoptive father of the new claimant) was first cousin of the deceased on the latter's father's side and that when he had claimed Hagnias' estate perhaps twenty years earlier, no kinsman disputed his claim on the score of kin relationship. Perhaps more compelling than the depositions themselves was the number of kinsmen cited by name, (deceptively) suggesting that hordes of kinsmen had flocked to the support of the young claimant to Hagnias' estate.[19] On the other hand, Macartatus in response undoubtedly will bring forward every living member of the Buselidae who is willing and all the phratry members he can muster who were present at the last hearing to attest to the "evidence" cited there that Polemon had no full sister.

In addition to these hearsay testimonies, Sositheus' case for Eubulides III also depends on his careful demonstration that the young claimant's relationship to Hagnias II is closer than Theopompus'. To this end, he provides a complete account of the five branches or "houses" (*oikoi*, pl.; *oikos*, sing.) of Buselus' family. *Oikos* can mean "house" as a literal house, or "property," or "family."[20] I have translated it as "house" throughout the speech because I think the speaker wants the judges to visualize the different families as "houses." That is, he uses "house" as a metaphor for "family," although, as we shall see, he sometimes uses it of a "family" of a special sort. This emerges from his introduction to the "genealogical account" where he says, "At first I was inclined, judges, to write on a board the names of all of Hagnias' kinsmen and to point them out in this way, one by one. But when I realized that a board would not be equally visible to all the judges and that those seated further away would be at a disadvantage, my only alternative was, I think, to instruct you with a narrative account" (43.18). Sositheus' depiction of five "houses" in the fol-

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had no brother" do not require a conjecture that they are used as proofs against someone else's hearsay evidence that Polemon *had* a brother. Thompson's refutation (1976: 82) is more convincing: "He mentions the possibility of a brother merely to exclude it as part of a logically complete showing that only Phylomache and her son are left alive in the house of Hagnias."

[19]See Humphreys 1985.

[20]See MacDowell 1989.

lowing narrative is his way of illustrating a complex set of relationships in a comprehensible way, for he is *not* presenting a mere genealogical table of families but something more sophisticated, namely, a word picture of "successional genealogy." In a sense, he is boxing the "circles of inheritance" with separate houses filled with linear descendants as far as children of first cousins.

Sositheus' description of these five branches as (metaphorically) "houses" (each extending as far as the children of first cousins) explains why he includes Phylomache I and II in the "house" of Hagnias I (43.22, 26, 49–50, 52). Now, this might be odd if one had in mind "families" with daughters who then by marriage become members of a second family; in that case, Phylomache I, by marrying Philagrus son of Eubulides I, would become a member of his family, and Phylomache II, by marrying Sositheus son of Sosias, would become a member of his family. But the law of succession does not exclude women who have married into other families; it follows blood lineage, starting from the relatives of the deceased on his father's side of the family, and a woman's marriage does not dissolve her bloodline to her mother and father for the purpose of inheritance. This is precisely what the speaker is trying to show.

By presenting "houses," Sositheus is showing that both Philomache I and II are still in Hagnias I's "house" and thus closer in line of succession to Hagnias II, notwithstanding a clause in the law of succession that gave precedence to males: "And the males are to take precedence, and the children born from the males, if they are from the same [direct ascendants] even if they are further away in respect to kin circle." This provision would have had no bearing on the capacity of Phylomache II to inherit in the earlier trial if her advocate had established the legitimate status of her grandmother; but Macartatus might have used it in the present trial to argue misleadingly for the claim of a more distant male relative.[21] By presenting the relationships in terms of "houses,"

[21] The simple and fallacious argument of male precedence is used by Sositheus himself against Macartatus later in the speech (43.78) and is used by Theopompus against Hagnias' mother in Is. 11.17.

Sositheus helps the judges keep in mind that the "successional relationship" is what matters in the first instance, that is, the relationship to the *deceased* on the side of his father. Eubulides III is first cousin once removed to the deceased Hagnias II because the deceased's father Polemon had a full sister Phylomache I (if this is true) who had a son (Eubulides II), a first cousin to the deceased, who now has a son, Eubulides III. For purposes of succession to Hagnias II, Phylomache II, Eubulides III, Eubulides II, and Phylomache I all belong to Hagnias' "house" on the side of his father Polemon the son of Hagnias I: that is their "successional box," and Theopompus is not inside it because second cousins are excluded.

The last portion of the speech is an ethical proof that the inheritance rightfully belongs to Eubulides III. To demonstrate that the law not only grants to kinsmen the right to inherit but also confers obligations on them, the speaker adduces numerous laws: for example, a law regarding the marriage of poor *epiklēroi* to kinsmen, the homicide law that permits kinsmen to grant pardon to involuntary killers, a law requiring kinsmen to bury the dead, and another that regulates the women who may attend a funeral. An obligation such as mourning the deceased Hagnias at his funeral falls upon Phylomache I and II but not upon Theopompus' wife (43.53–67). Although the speaker presents a cascade of laws here, none of them have any direct bearing on the legal issues of the case. And while the laws specifying obligations for kinsmen who are within the inheriting circles (the *anchisteia*) nicely complement the law of succession that gives them the right to inherit, the speaker does not exploit them with any great profundity. Perhaps he hoped that the pile-up of laws would create an aura of legitimacy for his unproven legal claim.

Other extralegal arguments may have been more effective in working upon the sentiments of the judges (43.72–84). First, he treats the conduct of his opponents. So far from caring about the preservation of Hagnias' *oikos*, Macartatus II was adopted into that of his mother's brother, Macartatus of the deme Prospalta (43.77, and cf. Is. 11.49), and he later installed his own son in the same *oikos* (43.77). Contrast the speaker's conduct: he has shown concern for preserving the Buselidae by sharing the family's burial ground, by intermarriage (his own and his daughter's), and by an

instinct to preserve the *oikos* of Hagnias from extinction by the adoption of his son into the *oikos* of Eubulides. It is not outside the realm of fanciful plausibility that Sositheus hoped, if Eubulides III won the estate, that later in his life the latter would leave a son behind in his adopted *oikos* and have himself adopted into the *oikos* of Hagnias II. Only such an adoption would prevent the extinction of the "house" of Hagnias as opposed to its amalgamation with the property of another family (e.g., Eubulides III's). That the earliest such a posthumous adoption might take place would be thirty or thirty-five years hence would be no long interval for the incubation and fulfillment of such a dream. Compare the interval in Oration 44: the aging plaintiff there waited out the tenancy of three adopted heirs to the estate of his grandfather's brother before he himself made application for it.

Any such fanciful dream on the part of Sositheus for his natural son may have ended with a decision in favor of Macartatus. A person named "Hagnias son of Macartatus of Oeon" appears on a list of ephebes under the year 324/3 BC.[22] The young man should have been eighteen years old in 326/5 and so will have been born in 344/3. Scholars have suggested that he is the son of the Macartatus who opposed Sositheus[23] and some think that his name indicates the continued possession of Hagnias' estate in the family of Theopompus.[24]

The Date, Authorship, and Authenticity of Cited Documents

Hagnias II is presumed to have died on an embassy that is mentioned in Isaeus 11.8. The late lexicographer Harpocration (s.v. Hagnias), citing his informants as the fourth-century local historians Androtion (*FGrHist* 324 F 18) and Philochorus (*FGrHist* 328 F 147), refers to a Hagnias who was captured and killed by Spartans while serving on an embassy. The author of the *Helle-*

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[22]Reinmuth 1971: no. 15.8. Ephebes are young Athenians recently having turned eighteen who perform two years of military service in Athens (*Ath. Pol.* 42.2–5). The eighteen year olds of a given year are "age mates."

[23]Thus Davies 1971: 86.

[24]See Thompson 1976: 106–107.

nica Oxyrhynchia (7.1 Bart.) also mentions an ambassador named Hagnias; this man sailed to Persia and was captured and killed by Pharax in 396. Most scholars identify these two men with Hagnias II of the orations. The identification has caused a problem of chronology because in the witness testimony cited in 43.31, it is said that Phylomache II the daughter of Eubulides II defeated all claimants to Hagnias' estate in the archonship of Nicophemus, that is, in 361/0. This would mean that thirty-five years elapsed between Hagnias' death and Phylomache's claim to the estate, but that seems too long a period for the transmitted events (the transfer of the estate to the adopted daughter; its subsequent transfer to Glaucon the half-brother by will; and the attempt of Eubulides II to win the estate, foiled by his death): over so long a period, we would expect Hagnias' adopted daughter to have survived him, married, and produced children and heirs, yet we hear nothing about her family.[25]

Of the various solutions, the most likely is Humphreys'.[26] She separates the Hagnias of the historians from the Hagnias of the orators and suggests that the latter may have served (and died) in the late 370s, possibly while on an embassy to Amyntas king of Macedon (*IG* II² 102). If so, then Hagnias' adopted daughter may have died before marriage in the late 360s. Phylomache's winning case may have taken place in 361/0 (43.31), she will have married Sositheus shortly before that hearing, and she may have lost

[25]Some scholars think that the witness testimony with its Archon date at 43.31 should be rejected as spurious: inheritance claims (via the hearings called *diadikasiai*) did not fall to the Forty (with a preliminary hearing before an official arbitrator) but to the Archon; moreover, Philomache's victory is said to have taken place in the courtroom (43.6). Humphreys (1983: 221–222 with n. 6) argues, however, that Phylomache may have followed up her courtroom victory with a suit for false testimony against one or more of the witnesses of her opponents; suits for false testimony fell to official arbitrators before they went forward to the Forty. The defendant will have conceded before the arbitrator; the deponents in 43.31 envision the arbitrator's decision (and the defendant's acceptance) as the moment when Phylomache II prevailed over "all the claimants."

[26]Humphreys 1983: 224–225.

the estate to Theopompus soon thereafter (ca. 360/59?). The current hearing will take place at least eighteen years after her marriage: Sositheus' oldest son was of age to summon Macartatus to the *diadikasia* (43.15); the second oldest (Eubulides III), born after Phylomache lost the estate to Theopompus (43.11), may well have been introduced to his adoptive father's phratry when he reached puberty. According to this reasoning, the present *diadikasia* takes place in the late 340s.[27]

Dionysius of Halicarnassus (*Demosthenes* 13) assigned this speech to Demosthenes, but modern scholars have been reluctant to follow suit not only on grounds of style but also because of the inadequacy of its legal argumentation. Regarding style, the speaker's argument and sentence structure are repetitive, his language often bloated and clumsy, his use of run-on *anakriseis* (inquiries by "question and answer") in 43.48–50 is much less pointed than Demosthenes' *anakrisis* in Oration 57.67, and the bold metamorphosis of the boy into a suppliant's branch set before the judges has more in common with Apollodorus' depiction of Neaera in actual litigation with the "Laws" in Oration 59.115 than with any passage in Demosthenes' corpus of private speeches.[28] Such comments as these are necessarily subjective, but some readers of Demosthenes may sense they are true and refuse to believe that a man who is a master of prose could forget how to write a decent sentence.

Regarding the legal argumentation: while the speaker has striven to have his witnesses focus on crucial aspects of the case (the status of Phylomache I and the position of Eubulides II in the *anchisteia*), he does nothing to counter the effect of Macar-

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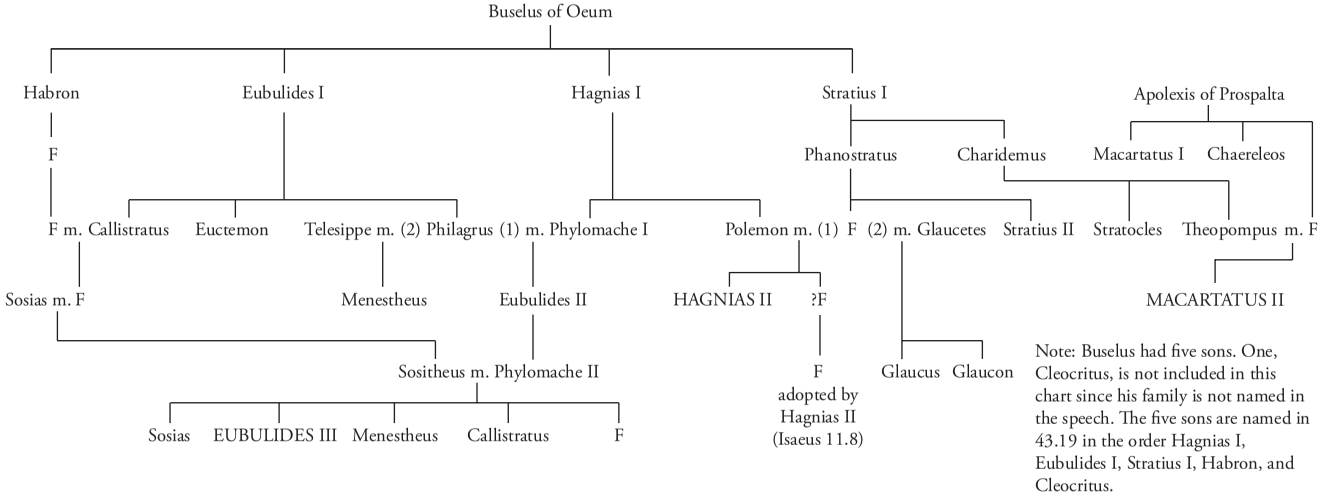
[27] Cf. similar chronologies suggested by Wyse 1904: 677, with reference to Blass and Schaefer. Nineteenth- and early twentieth-century scholars were not misled by the author of the *Hellenica Oxyrhynchia*; the work had not yet been discovered.

[28] See Blass 1893: 554–556. Wyse 1904: 675 is eloquent in disapprobation: "Sositheus, who at great length and with preternatural solemnity, invokes all the sanctions of law, morality, and religion, leaves a more unfavourable impression even than Theopompus [the speaker of Is. 11], who at any rate is no Tartuffe."

tatus' witnesses, some of whom will surely attest to the last adjudication. Moreover, although his *oikos* argument may be more incisive in conception than earlier scholars have recognized, its plodding execution remains unsatisfactory. Other arguments are no better. He lays on law after law without legal relevance, and when he presents the law on succession, he offers only the briefest interpretation (43.51–52). Some scholars have observed similarities of style between this speech and Oration 48 and suggest that the same author may have written both.

Only one of the major manuscripts of Demosthenes carries the testimonies and laws, the tenth-century manuscript in Munich known as Augustanus 485. The authenticity of both categories of documents has been contested, and some controversial pieces of witness testimony have already been mentioned (the deposition inserted at 43.31 with a reference to official arbitration: n. 25; the testimonies saying "Polemon had no brother": n. 18). But twentieth-century scholars tended to accept the authenticity of these documents, and although some of the names in the witness testimonies may be corrupt, that is no reason to think that the documents have been fraudulently composed.[29] The laws that are inserted into the text and read to the court have likewise been treated as authentic; some are of paramount importance to our view of Athenian society: not only the (rather dry) law of intestate

[29]E.g., the witness deposition inserted at 43.42 seems to carry two errors: the witness designates one informant as "Phanostrate daughter of Stratius" and another as "Callistratus the father of Sositheus' wife." The speaker tells us, however, that his father's name was Sosias and that Callistratus was the name of his *mother's* father (43.74); accordingly, the witness deposition should read: "Callistratus the father of Sosias' wife." Phanostrate creates a greater difficulty, and many editors have changed her to "Phanostratus father of Stratius," since the same manuscript furnishes the male name at 43.22 (although other manuscripts read "Phanostrate" there). There is now additional support for the alteration in 43.42: a Phanostratus son of Stratius of Oeum Cerameicum is now attested (for the first time) in a list of Councilors dated between ca. 380 BC and 353/2 BC (*Hesperia* 1978: 90–91); for suggestions about the identity of the Councilor, see Humphreys 1983: 222 n. 7. The two errors in combination do not make a strong argument that the deposition has been forged.



Note: Buselus had five sons. One, Cleocritus, is not included in this chart since his family is not named in the speech. The five sons are named in 43.19 in the order Hagnias I, Eubulides I, Stratius I, Habron, and Cleocritus.

succession (which appears to be authentic though abridged) but also laws regarding the marriage of poor *epiklēroi* or "heiresses" (43.54); homicide (43.57); the taking up of (unclaimed) corpses (43.57–58); funeral rites (43.62); and the protection offered by the Archon to orphans, *epiklēroi*, houses that were becoming extinct, and pregnant women who remained in the houses of their deceased husbands (43.75). Comments regarding the authenticity of the laws will be found in the notes to the text; the law of succession is treated in the Introduction to this volume, V.

43. AGAINST MACARTATUS, CONCERNING THE ESTATE OF HAGNIAS

[1] Since Hagnias' estate, judges, has already been an issue in our suits against these same men and since they do not cease from their lawless and violent conduct in their zeal to possess by any means fair or foul what does not belong to them, I am obliged, I believe, to narrate the events in detail from the beginning. [2] For then, judges, you will follow all the arguments more easily, and you will see the sort of men my opponents are: how they began their wily plottings long ago and have not let up one bit and think it a duty to carry out whatever whim enters their heads. We therefore beseech you, judges, to listen to the arguments with goodwill and to follow with careful attention. For my part, I shall try to explain these matters as clearly as I can.

[3] The mother of this boy here,[30] judges, since she was nearest by kin circle[31] to Hagnias of the deme Oeon, was awarded his estate in accordance with your laws.[32] Of those who at that time

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[30] The expression "this boy here" is used thirty times in this speech to refer to Eubulides III but will appear only three times here. For the identity of the mother, see 9n.

[31] For the translation of *genei* as "by kin circle," see the Introduction to this volume, n. 55.

[32] Before Phylomache II won the estate, a court had awarded it to Glaucon; a law that provides the procedure for instituting a new hearing after an estate has been awarded is read to the court in 43.16; see the Introduction to this volume, IV.4.

were disputing this estate with her, no one even tried to put in a counter-oath that he was closer by kin circle than the lady was[33] (in fact, everyone agreed that the inheritance belonged to her, according to the rules of kinship);[34] [4] but Glaucus of Oeon and his brother Glaucon were present with a sham will they had concocted. And Theopompus, the father of Macartatus, joined these men in all their machinations and served as witness to most of the depositions. But the will they produced at that time was proven to be a fake, and not only did they lose their claim, they also left the courtroom with a reputation for being the worst sort of scoundrels. [5] Moreover, Theopompus, the father of this Macartatus, was in Athens at the time, and when the herald was making a proclamation, asking, did anyone want to dispute the claim to Hagnias' estate or put down a deposit for a hearing whether on the basis of kin circle or will,[35] he did not dare to pay the fee but instead pronounced judgment against himself that he had no right to Hagnias' estate.[36]

[6] Although the mother of this boy was in possession of the estate after she had defeated all who had made claims against her in court, these men are such rogues—indeed they think they are under no obligation to obey either your laws or court-

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[33]"Counter-oath" (*antomosia*) here signifies the oath taken at the preliminary proceedings by the contending parties in confirmation of the truth of their respective declarations. For other uses of the term, see Harrison 1971: 99–100.

[34]"Rules of kinship" here translates the Greek word *anchisteia*; other translations are possible as well, e.g., "order of succession," "circles of kin"; the *anchisteia* provides the order of potential heirs in the absence of a direct descendant. See the Introduction to this volume, V.

[35]Regarding the herald's proclamation and the deposit of a court fee, see the Introduction to this volume, IV.2a at n. 42. The deposit required is one-tenth the value of the estate, or about 1,200 drachmas for an estate of "about two talents" (Is. 11.44).

[36]Either Theopompus had too little confidence in the strength of a claim in his own behalf to risk putting down the deposit at this time or else he was too deeply involved in collusion with his kinsmen to do so.

room verdicts—they kept trying, by every means imaginable, to deprive the lady of the estate that you had awarded her by your votes. [7] They bound themselves together by oath and drew up an agreement and deposited it with Medeius of the deme Hagnous, and then Theopompus, the father of this Macartatus, and Glaucon and Glaucus who lost the earlier case, and another of their friends whom they added as a fourth (Eupolemus was his name)—all these men plotted together and summoned the lady before the Archon for an adjudication of Hagnias' estate.[37] They claimed that if someone wanted to contest the matter, the law provides for a summoning of the party previously awarded the estate and in possession of it. [8] And by the time the Archon was introducing the case into the court and we had to present our arguments, everything pertaining to the trial had been contrived in their interest—especially the amount of water for measuring the speaking times—they got quadruple the amount allowed us. For the Archon was required, judges, to pour out an amphora of water for each of the parties making a claim; and there were three *choes* for the reply.[38]

[9] It therefore turned out that I, who was making the claim on behalf of my wife,[39] not only was unable to explain to the judges what I wanted about the inheriting circle and all the other relevant matters, I could not even defend myself against the smallest

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[37]There were four claimants: Glaucus and Glaucon (counting as one), Eupolemus, Theopompus, and Phylomache II. See the Speech Introduction. Similar collusion among claimants to an estate is alleged in Dem. 48 (and cf. Is. 11.20–21).

[38]The amphora and *choes* (a *chous* is a "pitcher" used as a measuring cup; approx. 12 *choes* = 1 amphora) hold the water that will be poured into the water clock to measure the time allowed for the speakers. Each claimant in this hearing is granted 15 *choes* in total (12 for the first speech, 3 for the second), so approximately 45–60 minutes each (if 1 *chous* = 3 or 4 minutes). Different amounts are reported at *Ath. Pol.* 67.2; see the Introduction to this volume, IV.2a, n. 45.

[39]In 43.17, we learn that her name is Phylomache [II], having the same name as her grandmother on her father's side.

fraction of the lies they told about us, for I had only a fifth part of the water.[40] And this was their strategy: to play as teammates and to act in total agreement, and to make up stories about us with no basis in reality. [10] Given their camaraderie and plotting against us, when four voting urns had been set up in accordance with the law,[41] the judges were of course misled and at odds with one another and, being befuddled by their shenanigans,[42] they voted as chance moved them. And there were more votes, just a few, only three or four, in Theopompus' voting urn than in my wife's.

[11] This was what happened in the past. But when this boy was born and it seemed to be the right time to act—not out of anger at what had taken place but in the belief that the judges' conduct was explicable—I introduced him to Hagnias' phratry as the [adopted] son of Eubulides [II], the boy's maternal grandfather, so that the house [*oikos*] might not become extinct.[43] [12] For that dear man, judges, Eubulides [II], the one who was nearest in the inheriting circle to Hagnias [II], used to pray to the gods that, above all else, a son might be born to him just as a daughter had been, the mother of this boy. But when his prayers failed and no

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[40]In 43.10, we are told that there were four voting urns for the claimants, yet Sositheus claims to have been allowed only a fifth measure of the total speaking time. Why a fifth part and not a fourth? Perhaps the half-brothers have separate speaking assignments.

[41]There would be one urn for each of the claimants (the two half-brothers counting as one claimant).

[42]The speaker is being conciliatory to the judges by offering an excuse for the unfair (in his eyes) decision in the earlier case (although the current panel of judges would not have heard that case).

[43]When Sositheus "introduces" his son to Hagnias' phratry as the [adopted] son of Eubulides [II], he is executing one of the steps in a posthumous adoption; see the Introduction to this volume, II.3. It is possible that he waited for his son to reach the age of puberty before introducing him to the phratry; that fits the chronological indications elsewhere in the oration (see the Speech Introduction at nn. 26–27). The speaker uses the term *oikos* ("house," "family") here for the first of many times; see the Speech Introduction at n. 20.

male child was born, not even one, then he earnestly desired that a son of his daughter be adopted into his own house[44] and Hagnias' and that the son be introduced to the latter's phratry.[45] He thought, judges, that the boy would be closest to him of all his surviving kinsmen and that their house[46] would in this way be preserved and not become extinct. [13] And it was I who undertook the matter on his behalf, seeing that the daughter of Eubulides is my wife, and I had been awarded her by the court as the one who is nearest [her] in the kin circle.[47] So I introduced this boy to the phratry of Hagnias and Eubulides, to which Theopompus, the father of this Macartatus, also belonged when he was alive, just as Macartatus himself does now. [14] And the phratry members, judges, yes, the members of Macartatus' phratry, the men who know the kin circle and its background best, when they saw that Macartatus himself was not eager to take a risk and that he did not remove the sacrificial animal from the altar [as he

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[44]Grandfathers (such as Eubulides II) who had daughters but no sons (*epiklēroi*) might adopt their grandsons as an "inheritance strategy" (Rubinstein 1993: 88–92 and 97–104); accordingly, it is plausible that Eubulides II had the desire to adopt his grandson but did not live long enough to do so. He may also have had in mind the possibility that an adopted son could claim Hagnias' estate, for he himself had made a claim on Hagnias' estate but died before the case went to court (43.43–45).

[45]Sositheus uses "house" (*oikos*) metaphorically of the successional unit of the Buselidae to which these men belonged (see the Speech Introduction at nn. 20–21). Since membership in phratries is hereditary, Hagnias I, Hagnias II, and Eubulides II (43.82) all belonged to the same phratry (to which Macartatus also belonged, 43.13–14) but not Sositheus, whose father does not appear to have been a blood relative of the Buselidae. Introduction to Hagnias' phratry is the same thing as introduction to the phratry of Eubulides II, but the phrasing here suggests that Eubulides II envisioned the amalgamation of the estates.

[46]I.e., the imaginatively constructed metaphorical "house" to which Eubulides II and Hagnias I/II belonged: a successional unit with a view to Eubulides III succeeding to the estate of Hagnias II.

[47]The speaker's wife was an *epiklēros*, an heiress without brothers; see the Introduction to this volume, IV.2b.

should have done] if the boy had been introduced improperly,[48] but preferred them to foreswear their oaths,[49] they picked up their voting pebbles while the sacrifices were burning, carried them from the Altar of Zeus Protector of the Phratries, and in the presence of Macartatus pronounced the rightful judgment, oh judges: this boy was introduced correctly and properly as the son of Eubulides into the house [*oikos*] of Hagnias. [**15**] After the vote of Macartatus' phratry members, this boy, as the son of Eubulides, summoned Macartatus to an adjudication of Hagnias' estate and obtained a day for the preliminary hearing before the Archon,[50] entering his brother's name as legal guardian. Indeed, it was no longer possible, judges, for me to be registered as guardian, now that I had adopted the boy into the house of Eubulides.[51] And the summons was issued by this boy in accordance with the law—the

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[48]The speaker insinuates that Macartatus made his discomfort over the adoption known to the phratry, although he did not openly oppose it. Macartatus has no grounds for opposition: the phratry members have not been asked to vote whether the boy is the heir of Hagnias II (although his becoming so might be a result of the vote) but whether he was born legitimately and probably whether his mother was the daughter of Eubulides II (Thompson 1976: 71). This passage, together with 43.82 below and Is. 6.22, suggests that a single member of a phratry might, under specific conditions (e.g., by virtue of a relationship to the candidate for admission) prevent or delay the candidate's admission by removing the victim from the altar, provided he undertook responsibility for his action. Rubinstein 1993: 37 interprets the passage here as implying that a phratry's decision could be appealed, at least to the phratry, if not to the People's Court.

[49]The speaker is sarcastic: Macartatus is either so timid or so tightfisted that he would prefer the phratry members to swear falsely to the legitimacy of Eubulides' admission rather than risk any small penalty that might be incurred if he were brought to account for wrongly preventing the boy's admission (perhaps by losing an appeal to the phratry or People's Court overwhelmingly).

[50]The technical language for opening the adjudication of an estate always implies a preliminary hearing before the Archon; see Harrison 1968: 159–160.

[51]According to Is. 7.25, an adopted son, while he loses his legal connection to his natural father, does not lose that connection to his mother; Eu-

same law by which they, too, had summoned this boy's mother, who earlier had prevailed in court and was in possession of Hagnias' estate.

[**16**] [*To the secretary*] Now please read the law, according to which the person in possession of the estate is to be summoned.

[LAW]

If anyone lays claim to an estate or an *epiklēros* after an adjudication hearing has been held, he is to summon before the Archon the individual to whom the award was made just as in the other lawsuits.[52] And the claimant is to pay the deposit.[53] And if the claimant is awarded the estate without having issued a summons, the award is to be without effect. And if the individual to whom the estate was awarded is no longer alive, a summons is to be made <to the current possessor> in the same way, provided that the statute of limitations has not expired.[54] And the point at issue for the possessor is how the property he possesses had been awarded.[55]

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bulides III's brother remains related to him through his mother and so can serve as his legal guardian (*kyrios*); see Harrison 1968: 94.

[52]The law sets up the procedure for reopening an inheritance case (see the Introduction to this volume, IV.4). The law, paraphrased in 43.7 and alluded to at 48.30 and Is. 4.25, is generally considered genuine. One might object that the law addresses the claim to an estate or an *epiklēros* at its opening but omits mention of the *epiklēros* thereafter; since the juristic logic applying to the estate applies equally to the *epiklēros*, however, it may have been thought unnecessary to keep mentioning the latter. Nevertheless, this is still a controversial question.

[53]See 43.5n.

[54]A suit contesting the estate could be brought during the lifetime of the first heir or heirs and within five years of his or their deaths.

[55]Since Macartatus, the current possessor, inherited the estate from his father, Theopompus, he must explain the grounds of its award to the latter and defend those grounds anew against the current competitor. Accordingly, the court will decide whether Theopompus' right to Hagnias' estate (not Macartatus' right to it) is better than the right of the posthumously adopted son of Eubulides II.

You have heard the law, and now I have a fair request to make, judges: [17] if I demonstrate that this boy, Eubulides [III], and Phylomache, who is his mother and also the daughter of Eubulides [II], are nearer by kin circle to Hagnias [II] than Theopompus the father of Macartatus—and not only that they are nearest by kin circle but also that not a single living being, none at all, belongs to the house of Hagnias except for the mother of this boy and the boy himself, if I demonstrate this, I ask you, judges, to help us.

[18] At first I was inclined, judges, to write on a board the names of all of Hagnias' kinsmen and to point them out in this way, one by one. But when I realized that a board would not be equally visible to all the judges and that those seated further away would be at a disadvantage, my only alternative was, I think, to instruct you with a narrative account.[56] For you all can hear me. And for our part, we shall try to give a depiction, in the fewest possible words, about Hagnias' circle of kin.

[19] Buselus' deme was Oeon, judges, and he had five sons: Hagnias [I], Eubulides [I], Stratius, Habron, and Cleocritus. And all the sons of Buselus reached manhood and their father Buselus distributed his property among them all, fairly and justly, as was fitting. And after they received their share of the property, each of them wed in accordance with your laws, and children were born to all of them and children to these children as well, and indeed five houses [*oikoi*] emerged from the single house of Buselus, and each dwelled apart, having his own house and producing his own line of descendants.[57] [20] Now concerning three of the brothers who were Buselus' sons and their descendants, judges, why should I trouble you, or myself, by producing an account of each of them? For although they are in the same inheriting circle as Theopompus and have the same relationship to Hagnias whose

[56]It is difficult to imagine just how the speaker thought he was going to do this for so large a family, especially since he intended to point out each kinsman individually.

[57]An interesting passage for considering the significance of the concept of the *oikos* ("house," "family," "estate": new "houses" evolve from the division of the estate amongst the sons); similar usage of *oikos* in 43.24–29. See the Speech Introduction at nn. 20–21.

estate is at issue, not a single one of them has ever troubled us either before or now, nor has any made a claim on Hagnias' estate or on the lady who is an *epiklēros*, whom I have as wife by the court's judgment,[58] nor did they think that any part of Hagnias' property belonged to them. [**21**] So it seems to me superfluous to say anything at all about them, beyond a mention as need arises.

But about Theopompus the father of Macartatus and about Macartatus here himself, I am obliged to speak. The tale is a short one, judges. For as you heard just now: five sons were born to Buselus; one of these was Stratius, great-grandfather of this Macartatus, and another was Hagnias [I], great-grandfather of this boy.[59] [**22**] You see, Hagnias [I] had a son, Polemon, and a daughter, Phylomache [I], who was Polemon's full sister, born of the same father and same mother as he.[60] Stratius, on the other hand, the brother of Hagnias, had two children, Phanostratus[61] and Charidemus, the grandfather of this Macartatus. Now I ask you, judges, who is nearer kin and more closely related to Hagnias [I]? Is it his son Polemon and daughter Phylomache [I]? Or is it Charidemus the son of Stratius—and nephew of Hagnias? Yes—Polemon and Phylomache—for as I see it, a son or daughter is more closely related to each of us than a nephew! And this is the rule not only among us but also among everyone else, Greek and barbarian alike.

[**23**] Well, since this is agreed, judges, you will easily follow my next points, and you will come to see that my opponents are reckless and outrageous men. For Polemon the son of Hagnias [I] had a son Hagnias [II], who had the same name as his grandfather, Hagnias. And this younger Hagnias died childless. [**24**] And Phylomache, Polemon's sister, and Philagrus, the man to whom her brother Polemon had given her in marriage, his own

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[58] See 43.13n.

[59] Eubulides III is a great-grandson of Hagnias I, not through his mother Phylomache II but as the adopted son of Eubulides II.

[60] Theopompus had argued in the earlier case that Phylomache I was not Hagnias I's legitimate daughter—hence the emphasis here on Phylomache's parentage; see 43.29.

[61] For Phanostratus and the alternative reading Phanostrate, see the Speech Introduction, n. 29, and the references cited there.

cousin[62] (for Philagrus was the son of Eubulides [I], a brother of Hagnias [I]), yes, Polemon's cousin Philagrus and Polemon's sister Phylomache bore a son Eubulides [II], who became the maternal grandfather of this boy. These were the sons born to Polemon and to Polemon's sister Phylomache [I]. But Charidemus the son of Stratius had a son Theopompus, the father of Macartatus our opponent. [**25**] At this point I ask you a second time, judges, who is nearer kin and more closely related to that first Hagnias? Is it Polemon son of Hagnias [I] and Eubulides [II] son of Phylomache [I] and Philagrus? Or is it Theopompus son of Charidemus—and grandson of Stratius?[63] I agree, judges; since a son and daughter are in fact nearest of all kin, then the son's son and daughter's son are nearer in kin than the son of a nephew or one from another house!

[**26**] To resume: Theopompus had a son, Macartatus, our opponent, while Eubulides [II], who was the son of Phylomache [I] and a cousin to Hagnias [II] on his father's side,[64] has as a son, this boy here who is the son of a cousin to Hagnias [II] on his father's side, for Phylomache [I] the mother of Eubulides [II] and

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[62]After the death of a father, a brother as nearest kinsman becomes legally responsible (*kyrios*) for giving his sister away in marriage; see the Introduction to this volume, I, at n. 17. On the ambiguity of *anepsios* (first cousin, first cousin once removed), see the Introduction to this volume, n. 57. The speaker regularly uses the term to refer to a first cousin; where he does not has been indicated in the notes (see esp. 43.41n and 49n).

[63]It is clear that the speaker expects the audience to respond resoundingly with shouts of "Polemon" or "Eubulides" or "No, not Theopompus!"

[64]Through his own father (Philagrus), Eubulides II was a *second* cousin to Hagnias II (the two men share the same great-grandfather, Buselus); but he was also a *first* cousin to Hagnias II "on his [i.e., Hagnias'] father's side," meaning: on the side of Polemon who was the father of the deceased Hagnias. Accordingly, it is not a misrepresentation on the part of the speaker to say (provided that Philomache I was really a full sister to Polemon) that "Eubulides II was son of a first cousin to Hagnias II on the father's side" (43.26 [twice], 32, 34, 49, 55, 56, 63) even though he could also express that relationship as first cousin "through his mother" (who belonged to the family of Hagnias I as his granddaughter and as Polemon's sister and as Hagnias II's aunt).

Polemon the father of Hagnias [II] were full siblings. But Macartatus here, the son of Theopompus, has no descendant who belongs both to the house of Hagnias and to that of Stratius. [**27**] All this being the case, this boy has one of the relationships mentioned in the law and up to which the law allows the right of succession [*anchisteia*] to extend, for he is the son of a cousin to Hagnias [II], since his father Eubulides [II] was a cousin to Hagnias [II], whose estate is in dispute. But Theopompus the father of Macartatus our opponent could not have appropriated for himself a single one of those relationships named in the law, for he was from a different house: the house of Stratius.[65] [**28**] And it is not proper, judges, for any man who is from a different house to possess Hagnias' estate, so long as any of those born in Hagnias' house survives, nor is it proper to expel any such survivor by force—which these men keep trying to do, although by kin circle they are more distant and not in the same house. For it is precisely on this point, judges, that Theopompus the father of Macartatus hoodwinked you.[66]

[**29**] Who then are left now in the house of Hagnias [I]?[67] Phylomache [II], my wife, who is also the daughter of Eubulides [II] the cousin of Hagnias [II], and this boy who was adopted into the house of Eubulides [II] and Hagnias [I]. Theopompus, however, the father of this Macartatus who is not a member of Hagnias' house, told an enormous lie about Phylomache [I] the sister of Polemon and aunt of Hagnias [II]: he said she was not the sister of Polemon, the son of Hagnias [I], born of the same father and mother, and he told another lie by pretending to be from the same house as Hagnias when he never was. [**30**] All these falsehoods Theopompus told fearlessly without providing a single witness who could have been held accountable to us; he had instead

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[65] Theopompus did claim to be a "cousin's son" (Is. 11.10) but interpreted the term as referring to a "second cousin." For ambiguity in the expression "children of cousins," see the Introduction to this volume, n. 57.

[66] The speaker is referring to the earlier hearing at which Phylomache lost the estate.

[67] I depart slightly from the *Oxford Classical Text* (Rennie) here, accepting Reiske's emendation and Baiter-Sauppe's punctuation.

a crowd of accomplices who were team players and did everything together in order to rob my wife, the mother of this boy, of the estate that you had awarded her with your votes on an earlier occasion.[68]

[31] I would like now, judges, to furnish testimonies to the statements I have made to you: first, that Phylomache [II] the daughter of Eubulides [II] won the contest over Hagnias' [II] estate since she is nearest by kin circle, and after that, about all the other points. [*To the secretary*] Read now the deposition.

[DEPOSITION]

. . . testify that they were present before the arbitrator in the Archonship of Nicophemus[69] when Phylomache [II] the daughter of Eubulides [II] prevailed over all the claimants for Hagnias' estate.

[32] You have heard, judges, that Eubulides' daughter won the contest over Hagnias' estate. And she won not by any unfair contrivance nor by conspiracy but in the way that was most just: we demonstrated that she was nearest by kin circle to Hagnias [II] whose estate is in dispute, for she is a child of a cousin on his father's side and is from Hagnias' house. **[33]** Accordingly, whenever Macartatus says that his father Theopompus won the contest for the estate, reply to him that the lady also won before Theopompus, this man's father, and add that she won justly since she

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[68] If Theopompus had produced no witnesses for his assertion that Phylomache I was not Polemon's full sister, and if he was corroborated only by the statements of the other claimants (esp. by Hagnias' mother: see the Speech Introduction at nn. 11–15) who themselves produced no witnesses, then there was no possibility for Phylomache to sue for false testimony. Sositheus thereby depicts a very tight conspiracy among his opponents. Most scholars think Sositheus is lying. Theopompus may have supplied no witnesses regarding kin relationships, but he may have supplied witnesses regarding other matters (e.g., a challenge), and if the other claimants were really in league with him, they are unlikely to have attacked his witnesses.

[69] The Archon year was 361/0. For an objection to the document's authenticity, see the Speech Introduction, n. 25.

is from Hagnias' house, being the daughter of Eubulides [II] the cousin of Hagnias [II], and that Theopompus did not win but cheated, for he does not at all belong to the house of Hagnias. [**34**] Make these your replies, judges, and add that this boy, Eubulides [III], is the son of Eubulides [II] and is the son of a cousin on his father's side to Hagnias, whose estate is in dispute, and that neither Theopompus the father of Macartatus nor any other man has ever defeated him. Today the contest for the award of Hagnias' estate is between this son of Eubulides and Macartatus here, the son of Theopompus. Whomever of the two you think speaks with greater justice and in closer conformity with the laws, clearly you judges will vote for that one.

[**35**] [*To the secretary*] Read the remaining witness testimonies, first, that Phylomache [I] the aunt of Hagnias [II] was sister to Polemon the father of Hagnias by the same father and mother. And then he will read all the rest of the depositions about kin filiations.[70]

[DEPOSITIONS]

. . . testify that they are fellow demesmen of Philagrus the father of Eubulides [II] and of Polemon the father of Hagnias [II], and that they know that Phylomache [I], the mother of Eubulides [II], was thought to be sister to Polemon the father of Hagnias, born of the same father and mother and that

[70]The following five depositions all attest the same information: that Phylomache [I] was full sister to Polemon and that the latter had no brother. For this second point, see the Speech Introduction, n. 18. Five depositions appear in 43.35–37 and another five in 43.42–46. There is no demonstrable proof that they are fake or genuine. I agree with Thompson (1976: 88–89), who points out details that appear only in the depositions and not in the text of the speech and argues that "a forger would not have been clever enough to have forged them"; this of course is no proof of authenticity, but if there were a forger, then he "has understood the case far better than most modern interpreters." Some scholars think that some of the witnesses in 43.35–37 appear again in 43.42–46. Thompson 1976: 86–89 argues that the two groups are identical.

they never heard from anyone that Polemon the son of Hagnias had a brother.

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[**36**] . . . testify that Oenanthe, the mother of their grandfather Stratonides, was the cousin of Polemon the father of Hagnias [II] since their fathers were siblings, and that they used to hear from their own father[71] that Polemon the father of Hagnias never had a brother, but he did have a sister Phylomache [I] born of the same father and mother, the mother of Eubulides [II] who was the father of Phylomache [II], Sositheus' wife.

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. . . testifies that he is a kinsman and is registered in the same phratry and deme as Hagnias and Eubulides and that he used to hear from their own father and from other kinsmen that Polemon the father of Hagnias [II] never had a brother but a sister born of the same father and mother, Phylomache [I], the mother of Eubulides [II] who was the father of Phylomache [II], Sositheus' wife.

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[**37**] . . . testifies that Archimachus[72] was his grandfather and adopted him as his own son, and that he was a kinsman to Polemon the father of Hagnias [II], and that he used to hear from Archimachus and other kinsmen that Polemon the father of Hagnias never had a brother but a sister, born of the same father and mother, Phylomache [I], the mother of Eubulides [II] who was the father of Phylomache [II], Sositheus' wife.

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[71] These witnesses may be the same as those in 43.44.

[72] The manuscripts have the name "Archilochus" here and later in the deposition, but most editors change the name to "Archimachus," the name that appears in the deposition at 43.45. As a result, the same witness may be responsible for the deposition here and in 43.45.

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> . . . testifies that his wife's father Callistratus[73] was a cousin of Polemon the father of Hagnias [II] and of Charidemus the father of Theopompus since their fathers were brothers, and also that his mother was the daughter of a cousin to Polemon and that she often used to tell them that Phylomache [I] the mother of Eubulides [II] was the sister of Polemon, the father of Hagnias, born of the same father and mother, and that Polemon the father of Hagnias never had a brother.

[**38**] Earlier, judges, when these men conspired with one another under oath and acted as one big team in the contest against the lady, we, judges, neither composed written testimonies for uncontested facts nor summoned witnesses[74] but thought that the actual facts of the case were sufficiently secure for us. These men, however, contrived many shameless ploys for the trial and were concerned with nothing but the deception of the judges at that critical time [**39**] and went so far as to claim that Polemon the father of Hagnias [II] never had a sister who was born of the same father and mother as he. So shameless and abominable were they—misleading the judges in so important and so transparent a matter—and they kept hammering away this one point and focusing the contest upon it. But this time we have provided all these witnesses here to speak about Polemon's sister, the aunt of Hagnias. [**40**] So let anyone who wishes give testimony for our opponent that Polemon and Phylomache were *not* siblings born of the same father and mother, or that Polemon was *not* the son and Phylomache *not* the daughter of Hagnias the son of Buselus,

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[73]Thompson 1976: 87–88 proposes emending the opening words here to "testifies that his *mother's* father, Callistratus" so as to make the witness identical to the one who testifies in 43.46.

[74]Sositheus probably means that he did not write the witness depositions or summon witnesses to confirm these by oath (see Dem. 45.44n and 46.11n). Gernet 1957: 108 suggests that he is alluding to two different procedures being used in the same trial, written depositions and oral testimony, but the date of the speech probably rules out this unlikely scenario.

or that Polemon was *not* the father of Hagnias whose estate is in dispute, and that Phylomache the sister of Polemon was *not* Hagnias' aunt; or [**41**] that Eubulides [II] was *not* the son of Phylomache and of Philagrus the cousin of Hagnias [II][75]—or let him attest this, that Phylomache who is alive now is *not* the daughter of Eubulides [II] the cousin of Hagnias [II], and this boy here is *not* his son, although he has been adopted in accordance with your laws into the house of Eubulides, or that Theopompus the father of Macartatus our opponent came from the house of Hagnias. Let anyone testify to any of these points he wishes for our opponent! But I know well that no human being will be so reckless and lacking in common sense to do that.

[**42**] So that it will be perfectly clear to you, judges, that our opponents were successful at the earlier trial by reason of their shameless conduct and that they made no just claim, [*to the secretary*], read all the testimonies that remain![76]

[DEPOSITIONS]

. . . testifies that he is kinsman of Polemon the father of Hagnias [II] and that he used to hear from his own father that Polemon's cousins, born from fathers who were brothers, were Philagrus, the father of Eubulides [II], and *Phanostratus the father* of Stratius, and Callistratus, the father of *Sosias'* wife, and Euctemon the former King Archon, and Charidemus the father of Theopompus and Stratocles, and also that Eubulides [II], through his father Philagrus, was in the same kin circle as were the sons of these [men] including Hagnias, but that through his mother Phylomache [I], Eubulides [II] was considered to

[75]Hagnias II is a first cousin once removed to Philagrus; *anepsios* here cannot mean "first cousin."

[76]The following five depositions all show Phylomache II's lineage; if true, the opponents did act shamelessly. None of them, however, provide positive proof that Phylomache I was a full sister to Polemon, and that is the crucial issue. For the disputed readings in the first deposition (italicized), see the Speech Introduction, n. 29.

be a cousin to Hagnias on his father's side since he was the son of Hagnias' paternal aunt.

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[43] . . . testify that they are kinsmen of Polemon the father of Hagnias [II], and of Philagrus the father of Eubulides [II], and of Euctemon the former King Archon, and that they know that Euctemon was a brother born of the same father as Philagrus the father of Eubulides [II]; and that when Eubulides [II] put in a claim against Glaucon[77] in the adjudication of the estate of Hagnias, Euctemon was still alive, being a cousin of Polemon the father of Hagnias since their fathers were brothers, and that Euctemon did not enter a claim against Eubulides for the estate of Hagnias, nor did anyone else on the basis of kin circle at that time.

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[44] . . . testify that their father Straton was a kinsman of Polemon, the father of Hagnias [II], and of Charidemus the father of Theopompus, and of Philagrus the father of Eubulides [II] and that they used to hear from their own father[78] that Philagrus took as his first wife Phylomache [I], sister of Polemon, the father of Hagnias, born of the same father and mother and that Philagrus had a son Eubulides [II] by Phylomache but that after Phylomache died, Philagrus took as his second wife Telesippe, and a brother to Eubulides was born, Menestheus, who had the same father but a different mother; and that when Eubulides entered a claim for Hagnias' estate on the basis of kin circle, Menestheus did not enter a competing claim for Hagnias' estate, nor did Euctemon the brother of Philagrus,

[77] The Greek text is corrupt here; the manuscripts read *prosklaiousa* ("she, weeping": impossible!); Schoemann's emendation is *pros Glaukona*. Wyse 1904: 685–686 suggests that the corruption could conceal the name of Hagnias' adopted daughter; if so, then Eubulides II attacked the will.

[78] See 43.36n, the second deposition.

nor did any other person on the basis of kin circle enter a claim against Eubulides at that time.

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[45] . . . testifies that his father Archimachus is a kinsman of Polemon the father of Hagnias [II] and of Charidemus the father of Theopompus and of Philagrus the father of Eubulides [II] and that he used to hear from their father that Philagrus took as his first wife Phylomache [I], sister of Polemon, the father of Hagnias, born of the same father and mother and that by Phylomache he had a son Eubulides [II], but that after Phylomache died, Philagrus took as his second wife Telesippe, and that by Telesippe there was born a son for Philagrus, Menestheus, a brother to Eubulides who had the same father but a different mother; and that when Eubulides entered a claim for the estate of Hagnias on the basis of kin circle, Menestheus did not enter a competing claim for the estate, nor did Euctemon the brother of Philagrus, nor did any other person enter a claim against Eubulides on the basis of kin circle at that time.

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[46] . . . testifies that his mother's father, Callistratus,[79] was the brother of Euctemon the former King Archon and of Philagrus the father of Eubulides [II] and that they were cousins of Polemon the father of Hagnias [II] and of Charidemus the father of Theopompus and that he used to hear from his mother that Polemon the father of Hagnias had no brother, but that he did have a sister of the same father and same mother, Phylomache [I], and that Philagrus took this Phylomache as his wife and that from them was born Eubulides the father of Phylomache [II], who is the wife of Sositheus.

[47] It was necessary, judges, to read these depositions so as to avoid our earlier experience when we were caught off guard by our opponents. But Macartatus our opponent even more plainly

[79] The witness of this deposition is a uterine brother or cousin of the speaker and may have produced the second deposition in 43.37.

will give testimony against himself, that neither Theopompus his father nor he himself has a right to be heir to any bit of Hagnias' estate since Theopompus is more distant by kin circle and does not by any means belong to the same house. [**48**] For if anyone, judges, were to ask, "Who is this man who is making a claim against this boy for Hagnias' estate?"[80] I know well that you would answer, "Macartatus." "Who is his father?" "Theopompus." "And his mother?" "The daughter of Apolexis of the deme Prospalta, and sister of Macartatus of the deme Prospalta." "And who was Theopompus' father?" "Charidemus." "And Charidemus' father?" "Stratius." "And Stratius' father?" "Buselus." This, judges, is the house of Stratius who is one of the sons of Buselus, and these are the descendants of Stratius, whose names you have heard. And there is not a single name in this group that is used by members of Hagnias' house, not even one that comes close.

[**49**] Now I shall ask this boy: "Who is he, entering a claim against Macartatus for Hagnias' estate?" The boy could answer nothing else, judges, but "Eubulides [III]." "Who is his father?" "Eubulides [II] the cousin of Hagnias [I]." "And his mother?" "Phylomache [II] who was child of a cousin to Hagnias [II] on the father's side."[81] "And as for Eubulides [II], who was his father?" "Philagrus, a cousin to Hagnias [II]."[82] "And his mother?" "Phylomache [I], the aunt of Hagnias [II]." "And who was Hagnias' father?" "Polemon." "And who was Polemon's father?" "Hagnias [I]." "And who was Hagnias' father?" "Buselus." [**50**] This is another house, the house of Hagnias;[83] he was one of the sons of Buselus, and in this group no name is identical to that of any of the descendants in Stratius' house, none whatsoever that even comes close; rather, these men take their places successively from one generation to the next in Hagnias' house, passing their names

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[80]This sort of questioning and answering (*anakrisis*) can be an effective way of focusing and funneling facts to the judges, but here it runs on and on; cf. Dem. 57.67 and Is. 1.36–37 and 2.25.

[81]I.e., she is Hagnias' first cousin once removed.

[82]Hagnias II is a first cousin once removed to Philagrus; *anepsios* here cannot mean "first cousin."

[83]See the Speech Introduction at nn. 20–21.

from one to another. In every way, then, and in all respects, our opponents are shown to be from a different house and more remote by kin circle, and they have no right to any share in Hagnias' estate. For the secretary will read you the laws regarding the persons to whom the lawgiver gives the right of succession [*anchisteia*] and inheritance.[84]

[LAW]

[51] Whenever a man dies without leaving a will, if he leaves behind female children, [the estate goes] with them,[85] but if not, the following are entitled to have the estate. If there are brothers [of the deceased] born of the same fathers; and if there are legitimate children born of the brothers, they are to obtain their father's portion. And if there are no brothers or children of brothers * * * <those born>[86] from them are to obtain a portion in the same way. And the males are to take precedence,

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[84]The law that follows is incomplete and corrupt. There is no positive proof that it is genuine, but it is hard to imagine a forgery so inept. Its provisions are corroborated in passages paraphrased or quoted in Is. 6.47, 7.20–22, and 11.1–3 and 11–13. Style and phrasing are similar to the text of Dracon's homicide law, republished in 409/8. The best discussion remains Lipsius 1905–1915: 549 n. 33 and 555–556 n. 43. For discussion of the law's provisions, see the Introduction, V.

[85]The daughters with whom "the estate goes" are *epiklēroi* (see the Introduction to this volume, IV.2b). The plural used here signifies that all daughters of the same father share alike the same status.

[86]Something must be missing in the gap marked by the asterisks: some scholars (Lipsius 1905–1915: 553 and n. 43; Wyse 1904: 680) have suggested the following supplement: "And if there are no brothers or children of brothers, <sisters of the same father and their children are to be allotted a portion in the same way; and if there are no sisters and children born from them, the brothers of the father and his sisters and the children> born from them are to be allotted a portion in the same way." Still other scholars would add a further circle of kin: the first cousins of the deceased's *father* (sons of paternal great-uncles, i.e., second cousins); see the Introduction for this volume, V, nn. 56 and 58.

> and the children born from the males, if they are from the same [direct ascendants] even if they are further away in respect to kin circle.[87] And if there are no [kinsmen] on the father's side [of the deceased] as far as the children of cousins, those on the mother's side[88] are entitled to inherit in the same way. And if there is [no one] on either side within these [kin circles], the one who is nearest on the father's side is entitled to inherit. And there is no right of succession [*anchisteia*] for any illegitimate child, male or female, either in regard to religious rites or in regard to civic privileges,[89] from the time of the archonship of Eucleides.[90]

[**52**] The law, judges, explicitly says to whom the inheritance should belong. It does not, by Zeus, belong to Theopompus, nor to Macartatus his son, men who in no way belong in Hagnias' house. But to whom, really, does the law give the inheritance? To the descendants of Hagnias, to those who are in *his* house. This, indeed, is what the law means and it is right.[91]

[**53**] Now the Lawgiver, judges, does not confer these benefits to kinsmen without prescribing very many other duties in the law that they are obliged, of necessity, to carry out. No, there are very many duties that he prescribes for the relatives to carry out, and he allows no excuse; they are obliged, of necessity, to carry them out. [*To the secretary*] But better still, read out this law, the first one.

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[87] E.g., the baby grandson of a brother of the deceased will exclude the living sisters of the deceased from inheriting a single drachma; see the Introduction to this volume, V at nn. 62–63.

[88] Following Blass, I exclude the words *tou andros* ("of the man") that appear in the manuscripts here after *pros mētros* ("on the mother's side").

[89] Scholars infer from Aristoph. *Birds* 1660 that a law of Solon excluded bastards from the *anchisteia* if there were legitimate children. The Solonian exclusion may have been less radical than the one formulated here; see Harrison 1968: 61–68. For the juxtaposition of "religious rites" and "civic privileges" (*hiera/hosia*), see Dem. 39.35n.

[90] Eucleides was Archon in 403/2.

[91] The law of course says nothing about "houses" (*oikoi*).

[LAW][92]

[54] In regard to all *epiklēroi* who are rated in the class of *Thetes*, if the nearest relative in her kin circle does not want to marry her, he is to give her away in marriage, with a dowry of 500 drachmas if he is a *Pentakosiomedimnos*, 300 if a *Hippeus*, and 150 if a *Zeugites*; her personal belongings are additional.[93] And if there are several kinsmen in the same kin circle, each is to contribute his share to the *epiklēros*. And if there are several women, it is not obligatory for one kinsman to give away in marriage more than one, but each nearest kinsman in turn is to give one away or marry her. And if the nearest of her kin circle fails to marry or give her away, the Archon is to compel him to marry or give her away. And if the Archon fails to compel him, he is to owe a thousand drachmas, consecrated to Hera. Any person who wants is to denounce [*apographein*] before the Archon the kinsman who does not carry out these prescriptions.[94]

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[92]The law that follows is probably authentic; although there is no verbatim or nearly verbatim quotation of the law elsewhere, the requirement that enjoins the nearest kinsman to marry a poor *epiklēros* or else to dower her appears in Is. 1.39 and in the later lexicographical tradition; it also shows up in New Comedy plots, and on two occasions the dowry offer is five hundred drachmas: the precise amount that a *Pentakosiomedimnos* must pay (Terence *Phormio* 409–410 and Poseidippos, cited by Harpocration s.v. *thētes*). Dowries of five hundred drachmas may have become regular for poor *epiklēroi*. For applications of the Solonian classes still effective in fourth-century Athens, see 43.75n. On the operation and authenticity of the law, see Scafuro 2006: 165–187.

[93]The four classes (from highest to lowest: *Pentakosiomedimnos* [= "the five-hundred measureman"], *Hippeus* [= "horseman"], *Zeugites* [= "owner of a team of oxen"], and *Thētes* [= the poorest men]) are the Solonian census classes; see Arist. *Ath. Pol.* 7.3. It has often been observed that the required amounts of dowry per class are almost equivalent to the amounts of produce per annum by which Athenians were assigned to each class by Solon (*Ath. Pol.* 7.4). See Rhodes 1981: 145 for bibliography.

[94]*Apographein* here probably means "to give information" or "to denounce." Cf. Lipsius 1904–1915: 300–301 and n. 11; Harrison 1968: 136 n. 1

[55] You hear, judges, what the law bids.[95] When it was obligatory to enter a claim for the *epiklēros*, Phylomache, who is both the mother of this boy and the child of Hagnias' cousin on his father's side, I came forward, fearful of the law and entered a claim as nearest by kin circle, whereas Theopompus the father of Macartatus made no appearance at all and, even though he is as old as I am, he did not enter any claim inasmuch as he had no right to do so.[96] [56] And yet how extraordinary do you think it is, judges, that in the case of the *epiklēros*, the daughter of Hagnias' cousin on his father's side, Theopompus never entered a claim for her, yet in regard to Hagnias' estate he thought he should have it—contrary to the laws? Could there be men more shameless or abominable than these? [*To the secretary*] Read the other laws, too.[97]

[LAWS]

[57] Kinsmen within the circle of cousin's child [*anepsiotēs*][98] and cousin are to make proclamation in the Agora against the killer.[99] Cousins [*anepsious*] and children of cousins [*anepsiōn*

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thinks the verb here means "let him bring a *graphē*" (or "indict"), but if it could mean that, one would expect the verb to appear in the middle.

[95]It is somewhat odd that the speaker uses the law obliging the upper three Solonian classes to marry poor *epiklēroi* as the background to show off his acceptance of the obligation to marry the *epiklēros* Phylomache. It is hard to imagine that her family was poor and that she belonged to the thetic class. But there was probably no law that required kinsmen to marry rich *epiklēroi* (a law would be unnecessary), and so this law probably provided rules only for the procedure by which *epiklēroi* were to be awarded.

[96]The *epiklēros* is claimed at law in the same way as an estate; see the Introduction to this volume at IV.2b.

[97]Portions of three different laws follow.

[98]The meaning of *anepsiotēs* in the first line is controversial; some (e.g., Wyse 1904: 566–568) think it refers to a cousin's child, i.e., a first cousin once removed; the same term is used in 43.63, when the speaker paraphrases the law cited in 43.62. Regarding the proclamation by kinsmen, see 47.69n.

[99]This is a portion of the law known to us as "Dracon's homicide law," which was "republished" (and possibly revised) in 409/8 (*IG* I^3 104, Fornara 15B). See Gernet 1957: 94 and n. 3 for an interesting suggestion that an error

paidas], sons-in-law, fathers-in-law, and phratry members are to join in the pursuit. And pardon is to be granted if the father is alive, or a brother or sons, all of them [in agreement] or else the one opposing is to prevail. * * * And if none of these are alive, and the killer acted involuntarily, and the Fifty-one, the *Ephetae*, decide that he killed involuntarily, then ten phratry members are to admit him if they give their consent.[100] The Fifty-one are to select the ten according to rank. Men who killed previously are to be subject to this ordinance.

—If no one takes up [the bodies of] men who die in the demes,[101] the Demarch is to order their kinsmen to take them

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in the manuscript attests its fidelity to the inscribed text. Stroud, who re-edited the inscription in 1968, summarizes the differences between the two texts of the law (p. 49): (1) in the law in the oration, the clauses calling for the family's participation in the proclamation against the killer and the pursuit by kinsmen appear first, and the provisions on pardon follow; in the inscribed law, the opposite order is found; and (2) the law in the oration omits a clause that appears at lines 14–16 of the inscribed law (indicated by the asterisks in the text above—there is no evident gap in the manuscripts); the inscribed law reads here: "And if none of these are alive, <kinsmen> as far as the children of cousins and cousin if all consent are to pardon, the one who opposes is to prevail . . ."

[100]The Fifty-one or *Ephetae* were the special judges in cases of involuntary homicide; it is uncertain whether they still manned the court in the fourth century. For a summary of the evidence, see Rhodes 1981: 647–648. The court that heard such cases was the Palladium; see 47.70n.

[101]The Demarch is the yearly official who presided over the administration of deme activities. The law encoding his responsibility for the dead does not appear elsewhere but could be genuine: it accords with Athenian customs regarding the dead and purificatory rites. A penalty on a magistrate for not carrying out a duty is common in Athenian laws (penalties for a Demarch are prescribed in a fourth-century deme decree: *IG* II^2 1183, lines 27 and 40 [= Rhodes and Osborne 2003: no. 63]). Moreover, the law is characteristic in that it foresees the absence of kinsmen, even if as a remote possibility (cf. Dracon's homicide law). *Agora* 19 P5 27–30 (= Rhodes and Osborne 2003: 36), a record of the Sellers of 367/6, records that one Isarchus of the deme Xypete had buried Theophilus and his wife of the same deme.

up and to give burial and to purify the deme, on whatever day each of them died. [**58**] And in the case of slaves, he is to give the order to the owner, and in the case of the free, to those who hold their possessions. If the dead man has no possessions, the Demarch is to give the order to his kinsmen. If the Demarch has given his order and the kinsmen do not pick up the dead, the Demarch, on the same day, is to contract for the taking up and burial and purification of the deme at the lowest possible cost. If he does not do so, he is to be fined a thousand drachmas payable to the Treasury. Whatever amount he spends, he is to exact that sum, twice over, as a penalty from those who are accountable. And if he does not exact it, let him owe it to the demesmen.

—Those who fail to pay rent for the precincts of the goddess and the other gods and eponymous heroes are to be deprived of their civic rights [*atimoi*],[102] themselves and their kinsmen [*genos*] and heirs [*klēronomoi*], until they pay up.[103]

[**59**] All these obligations that the laws impose on kinsmen to perform, the laws impose on *us* and compel *us* to perform, judges. But the laws have nothing to say to this Macartatus nor to Theopompus the father of this man, for they are not from Hagnias' house in any way. How then could the laws impose any obligation on them?

[**60**] Our opponent has no just response, oh judges, to make to the laws and testimonies that we have furnished; nevertheless,

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Lambert 1993: 318–319 suggests that Isarchus may have been the Demarch of Xypete carrying out his duty to bury the dead left unburied by kinsmen.

[102]Disfranchisement (deprivation of civic rights) is a penalty in Athens for those who incur public debt; see Dem. 39.14n.

[103]Full provisions regarding the leasing of sacred land appear in *Ath. Pol.* 47.4–48.1; an early example of a lease is that for the precinct of Neleus and Basile in 417 (*IG* I^3 84). The provision here could be genuine: corroboration that sons (heirs) inherit their fathers' *atimia* appears in Dem. 22.34, 24.201, 59.6. There is a problem, however, with the wording: it suggests that *atimia* could be passed to any heir, whether direct kinsman or not. Perhaps the law, if written thus, was simply understood: kinsmen would not be liable unless they became heirs; see Harrison 1968: 128 n. 2.

he protests and says he is at a terrible disadvantage because he is pleading his case when his father has passed away. Macartatus, judges, has not understood that his father was a mere mortal and so has died along with many others, younger and older alike. But if Theopompus the father of this man is dead, the laws are not, nor is justice, nor the judges who give the verdict! [**61**] The hearing that is taking place now for the award of the estate does not concern whether one individual has died before or after another but whether it is right for Hagnias' kinsmen who are cousins and children of cousins to Hagnias on his father's side to be driven out of Hagnias' house by kinsmen from the house of Stratius who have no right to inherit Hagnias' property but are more distant in respect to kin circle. This is the crux of the hearing today.

[**62**] Still more clearly, judges, will you see from the following law the importance that Solon the Lawgiver attaches to kinsmen: he is not content with giving only the property left behind to kinsmen; he additionally imposes on them all the burdensome duties. Read the law.[104]

[LAW]

> The dead man is to be laid out indoors in whatever way one likes. And they are to carry out the dead man on the day after they lay him out, before the sun rises. The men are to walk in front when the dead are carried out and the women behind. It is not permissible for a woman under the age of sixty to enter the [chamber] of the dead man nor to follow the dead man when he is carried to the tombs except for those within the circle of the children of cousins [*anepsiadōn*].[105] Nor is it permissible for a woman to enter the [chamber] of the dead man after

[104] The law that follows may be part of a Solonian law concerning funeral rites; cf. the burial practice at Ant. 6.34 and Plato's *Laws* 959a and for details concerning women: Plut. *Solon* 21. Possibly the law also regulated the purification of the house and other "traditional rites" for the following interment, as at Ant. 6.37. Blok 2006 argues for authenticity and Solonian origin.

[105] See Thompson 1976: 98–99 on the terminology for cousins here.

the corpse has been carried out, except for those within the circle of the children of cousins.

[**63**] The Lawgiver does not permit any woman to enter where the dead man lies or to follow to the tomb, except for those who are no more distantly related than a cousin's child [*anepsiotētos*]. Now Phylomache the sister of Polemon the father of Hagnias was not Hagnias' cousin but his aunt, for she was the sister of Polemon the father of Hagnias. But Eubulides the son of this woman was Hagnias' cousin on his father's side, and it is Hagnias' estate that is at issue. And this boy's mother is Eubulides' daughter. [**64**] The law provides for the presence of these kinswomen at the laying out of the dead and for their attendance at the tomb;[106] it does not so provide for Macartatus' mother nor yet for Theopompus' wife,[107] for this lady has no relationship at all to Hagnias but is from a different tribe, Acamantis, and from a different deme, Prospalta, so that she was not even told when Hagnias had died. [**65**] Indeed, this is our opponents' most shameless maneuver: although we and the ladies of our family, at the death of Hagnias, were obliged to become heirs to Hagnias' *body* and perform all the customary rites—for we are his kinsmen and are closest by kin circle—yet Macartatus thinks he is obliged to possess the *estate* of the deceased Hagnias, although he is from Stratius' house and was born to the daughter of Apolexis the Prospaltian who was the sister of Macartatus [I]! Judges, this is neither just nor pious.

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[106]The speaker gives the law first and then illustrates its restrictions by carefully demonstrating that Phylomache II is a first cousin once removed (cousin's child); she is not prohibited from attending Hagnias' funeral, whereas Macartatus' mother (Theopompus' wife) is prohibited. He implies that the latter does not come within the circle of cousins and cousin's child. That, however, is irrelevant: only women who were blood kin could attend funerals; unless Theopompus' wife had married her own cousin, she could not attend the funeral of her husband's kin.

[107]"Macartatus' mother" and "Theopompus' wife" are of course the same woman.

[66] [*To the secretary*] Read the extract from the oracle that was brought back from Delphi from the god's sanctuary, so that you may see that it says the same things about kinsmen as the laws of Solon.[108]

[ORACLE]

May good fortune be yours! The Athenian People ask about the sign that appeared in the sky: what should they do or to what god should they sacrifice or pray so that what follows from the sign may turn out best for the Athenians? [*Response*] In regard to the sign that appeared in the sky, it is in the Athenians' interest to obtain favorable omens while sacrificing to Zeus Supreme, Athena Supreme, Heracles, Apollo Savior, and to send offerings to the Amphiones;[109] for good

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[108]Demosthenes at 21.51 uses phraseology similar to that in the oracle that follows here, when he introduces the oracles from Delphi and Dodona by saying they bid the city "to establish choruses in the ancestral manner and to fill the streets with the savor of burnt sacrifice and to wear wreaths." The oracle inserted here could have been found in a collection of oracles; dialectical forms from Doric might represent a Delphic text but some do not appear in the manuscripts and have been added by later editors. Nonetheless, it might be expected that some word forms become corrupt through transmission; see MacDowell 1990: 270–273. The directions "to set up bowls of wine and choruses and to wear wreaths" and for the lifting of arms and offering sacrifices of thanksgiving appear in the first oracle at 21.52 as well as in the oracle here. Gernet 1957: 118 n. 1 observes that the question at the outset and the style of response conform with contemporary practice of Delphic divination. See Parke and Wormell 1956. For an example of one form of consultation of the oracle at Delphi in the mid fourth century, see *IG* II^2 204, lines 23–54 (= Rhodes and Osborne 2003: 58), and see the fine observations in the same volume on pp. 279–281. The speaker makes very little use of the oracle in his speech—only in the opening sentence of 43.67. Nonetheless, as Thompson 1976: 100 points out, its solemnity elevates the tone of the speech.

[109]It has been suggested that the three final words of this clause should be altered to become "to Amphion and Zethus."

> fortune, you are to fill the streets with the savor of burnt sacrifice for Apollo Guardian of Streets, for Leto, for Artemis, and you are to set up bowls for wine and choruses and to wear wreaths in the ancestral manner; and, lifting up your right and left hands in the ancestral manner to the Olympian gods and the Olympian goddesses, to all of them, gods and goddesses, you are to make the traditional public sacrifices of thanksgiving; and you are to offer the traditional sacrifice and gifts to the founding hero from whom you have your name; following custom, relatives are to perform rites for the dead on the appointed day.

[67] You hear, judges: Solon in his laws and the god in his oracular response utter the same commands, that kinsmen are to act in the interest of the dead and departed on appointed days. Yet Theopompus showed no concern at all for the rites of the dead; nor did Macartatus—no, only this mattered: to keep what does not belong to them and to complain that, after possessing the estate for a long time, they now are engaged in a contest for it. For my part, judges, I should have thought that when a man wrongfully possesses property that belongs to others, he has no right to complain if he was in possession of it for a rather long time; he ought rather to be grateful—not to us, but to fortune—for the innumerable and unavoidable delays in the meantime that postponed the trial for that property until today.

[68] Such, then, is the character of these men; indeed, judges, they show no alarm over the imminent extinction of Hagnias' house or over any of their other lawless activities. These are men who . . . by Zeus and the gods! What could anyone say about the rest of their doings? It would be a lengthy tale to tell. But one act they have carried out is lawless and revolting beyond all others and especially shows that only profit matters to them; [69] for no sooner had Theopompus established his claim to Hagnias' estate in the manner that you have heard than he immediately revealed his own belief that he had no right at all to the possessions. For the items that were most valuable among the properties owned by Hagnias, the items that were most admired by neighbors, indeed, by all men everywhere, were the olive trees. They

dug out and removed the ovules from these,[110] more than a thousand stocks, from which a great deal of olive oil used to be produced; having cut out the ovules from them, they sold them and made a huge profit—and all this they were doing while Hagnias' estate was still subject to adjudication in accordance with the very law by which they had summoned this boy's mother to court![111] [70] To prove that I am telling you the truth, that these men removed the ovules from the olive trees from properties left behind by Hagnias, we shall provide as witnesses both neighbors and others whom we summoned when we were calling for testimony about these matters.[112] [*To the secretary*] Read the testimony.

[DEPOSITIONS]

. . . testify that upon summons from Sositheus they followed him to the deme Araphen to the fields of Hagnias after Theopompus was awarded Hagnias' estate and that Sositheus showed them the olive trees that were being rooted out from Hagnias' land.

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[110]I follow Foxhall 2007: 104–108 for translation and interpretation of this passage. The verb *ekpremnizein* is used in 43.69 twice and again in 43.70, and a simplex form *premnizein* appears in the witness testimony there. The verbs are found only here and in later testimonia and may mean "to cut out [or "to remove"] ovules." Ovules are knotty growths that appear as protuberances at the level of the tree's "collar"; if taken from the trunk itself, the productivity of the stock plant is likely to be reduced and even damaged. Once removed, the ovules are used for the propagation of olive trees. Theopompus may have used them to start new olive trees on other land or sold them at great profit.

[111]At the time when Theopompus "cut out the ovules," he had been awarded the estate by the court. We are to infer that he did not expect to maintain control of the property; another claimant with better credentials might soon reopen the case (see the law cited in 43.16). Accordingly, he hurries to make a fast profit from the olive trees.

[112]For the meaning of *epimartyresthai* ("call out" or "appeal to for testimony"), cf. Dem. 34.28, 47.38, 55.7.

[71] Now if, judges, their deed had been an outrage to the dead man alone, it would have been a terrible one, though not the most terrible. But as it is, this entire city has been subjected to their outrageous treatment and lawlessness. You will know this when you have heard the law. [*To the secretary*] Read the law.[113]

[LAW]

If any one digs out an olive tree in Athens, unless it be for a sanctuary belonging to the city or a deme of the Athenians, or for one's own use limited to two olive trees per year, or for needs arising in the service of the dead, he is to pay a fine of a hundred drachmas for each olive tree to the Treasury and a tenth part shall belong to the goddess. Additionally, he is to pay a fine of a hundred drachmas per olive tree to the private individual who prosecutes him.[114] The suits for these of-

[113]Gernet 1957: 120 n. 1 supposes the law is archaic, possibly Solonian and notes that, in conformance with archaic style, the magistrates (or "Archons") are called *dikastai* (also in a Solonian [?] law of homicide at Dem. 23.28); the same term in classical Attic usually means "judges" (i.e., the members of the large juries who give the verdict). Obvious post-Solonian details (e.g., deme sanctuaries) may be due to legislative revision. Foxhall 2007: 106–107 points out that if this law was used in the trial (i.e., if it is not a forgery and has not been inserted here by mistake), then Sositheus "could be attempting to mislead the jury" by citing an irrelevant law; the witnesses (if testimony is genuine) attest only that Theopompus "cut out the ovules" (*exepremnizon*), not that he "dug out the trees" (which is against the law). Moreover, his use of the verb "dig out" in 43.69 is coupled with "remove the ovules" and there he may have used "dig out" misleadingly for "dig out the ovules."

[114]While the twofold payment of the penalty (half to the treasury and half to the prosecutor) resembles that in the procedure called *phasis* (a special kind of public prosecution), the identity of the legal remedy here is uncertain; see MacDowell 1991: 195. In any case, the reward for the prosecutor is a mighty enticement to private citizens (in the absence of state prosecutors) to pursue those who dig out olive trees. That Sositheus did not prosecute Theopompus and collect a potential fine of 10,000 drachmas as his

> fenses are to be before the Archons, according as each of them has jurisdiction. Let the prosecutor pay a court fee [*prytaneia*] for his share.[115] In the case of a conviction, the Archons before whom the suit was brought are to register the sum owed to the state with the Collectors[116] <and the sum owed to the goddess> with her stewards. And if they do not do so, they themselves shall be liable.

[72] This law is quite severe. Now, reflect on this, judges: what, pray, do you think we have suffered from them and from their outrageous conduct in the past, when they have treated you, a city of such greatness, and your laws contemptuously, and when, in spite of the law's explicit prohibition, they have ravaged without scruple the lands left behind by Hagnias? The law forbids a man to do any of these things even to one tree from his own ancestral plot. Truly do these men care about obeying your laws or preserving Hagnias' house from extinction!

[73] I would like, judges, to say a few words about my conduct and prove to you that I, unlike these men, made it my special concern that Hagnias' house should not become extinct. For in fact I myself am of Buselos' stock [*genos*]. Yes, for Callistratus, being the son of Eubulides [I] and grandson of Buselus, married the granddaughter of Habron, the son of Buselus; and from Habron's granddaughter and his nephew Callistratus, my mother

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own reward suggests that Theopompus has removed ovules and not dug out the trees themselves.

[115] The amount of the court fee was determined by the sum sought from the opponent: if the sum was between 100 and 1,000 drachmas, each party paid 3 drachmas; if over 1,000 drachmas, each paid 30 drachmas (Pollux 8.38). It seems that public suits (as the one over olive trees appears to be) did not require a court fee because the interests of the state were at stake and not those of private individuals. The exception is apparently made here (and perhaps generally in actions of *phasis*) because of the prosecutorial reward.

[116] The duty of the board of "Collectors" (*praktores*) was to collect for the state the fines imposed by the courts from convicted offenders (cf. Ant. 6.49; And. 1.77, 79; Dem. 58.20, 48). The *Ath. Pol.* omits mention of this board.

was born.[117] [74] And I myself, after I had been awarded the mother of this boy, and four sons and a daughter were born to me, I conferred upon them, judges, these names: upon the eldest, that of my father, "Sosias," as is only right—yes, I gave to the eldest that name; to this boy, the second eldest, "Eubulides," which was the name of the boy's maternal grandfather; to the next son, the name "Menestheus" (in fact, Menestheus was a relative of my wife); and to my youngest son, I gave the name "Callistratus," the name of my maternal grandfather.[118] Moreover, besides these family names, I also gave my daughter in marriage not to any outsider but to my brother's son, so that, if they proved healthy, the sons born from them should also be from the same stock [*genos*] as Hagnias. [75] You see how I have managed matters so that the houses that emerged from Buselus should be preserved in the best way possible.[119] Let's examine my opponents once again. [*To the secretary*] But first of all read this law here:[120]

[LAW]

The Archon is to take care of orphans, *epiklēroi*, houses that are destitute of heirs, and all women who remain in the houses

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[117]As evident throughout this oration, there is a great deal of intermarriage among the different branches of Buselus' family; observe here that Callistratus marries his first cousin once removed.

[118]On the conferral of family names, see Dem. 39.27n.

[119]Note the altered terms that the speaker uses for members of his immediate family in 43.73–75: he himself is "of Buselos' stock" (his *genos*, not his *oikos*); he hopes that healthy grandsons will be born from his daughter and nephew so they might be from "the same stock as Hagnias" (his *genos*, not his *oikos*); and he has managed "so that the houses that emerged from Buselus should be preserved in the best way possible" ("the *oikoi* from Buselos," not "the *oikos* of Hagnias").

[120]The law is corroborated by the description of the remedies overseen by the Archon at *Ath. Pol.* 56.6–7 and by paraphrases at Is. 7.30; Aes. 1.158; Dem. 35.48; and Dem. 37.46. See Rhodes 1981: 633–634 and Scafuro 2006: 165–187 for a detailed treatment of the law.

of their deceased husbands on the claim they are pregnant. The Archon is to take care of these and he is not to allow anyone to mistreat [*hybrizein*] them. And if anyone does mistreat [*hybrizēi*] them or does anything contrary to law or custom [*paranomon*],[121] he is authorized to penalize him according to the rating.[122] And if he thinks the offender deserves a greater penalty, he is to summon him within five days, and, having written down whatever penalty seems right to him, he is to bring him before the Heliaia.[123] And if he is convicted, the

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[121]Almost identical phrasing regarding the offense appears at the opening of the law of *hybris* cited at Dem. 21.47: "If anyone mistreats (*hybrizēi*) anyone, either child or woman or man, free or slave, or *does anything contrary to law or custom* against any of these . . ." If, as seems likely, the law at 43.75 is earlier than the law on *hubris*, then the latter appears to extend the coverage offered to orphans, *epiklēroi*, and pregnant widows to all the inhabitants of Athens. The meaning of the offense of *hybris* has been much debated. MacDowell (1978: 129 with n. 280) describes the hubristic person in this way: "A person shows *hybris* by indulging in conduct which is bad, or at best useless, because it is what he wants to do, having no regard for the wishes or rights of other people." Fisher (1992: 126) emphasizes the victim's injury: *hybris* is "the deliberate attack on the *timē* (honour) of another." The meaning of "do something *paranomon*" is equally difficult: *paranomon* can mean something "contrary to law" or "contrary to custom," i.e. improper or immoral or antisocial conduct. It probably means the latter here.

[122]I follow Kahrstedt's interpretation (cited by Harrison 1972: 5 n. 1) that the Archon is "to assess a penalty in accordance with the offender's Solonian census rating." Rhodes 1981: 634, following Gernet, holds that it means "to impose a penalty within the arkhon's competency." Solonian census ratings still served some functions in fourth-century Athens, e.g., cleruchs (citizens allotted land in Athenian colonies) were chosen from *Zeugitai* and *Thētes* (*IG* II² 30; *Hesperia* [40] 1971: 164, line 12). See Hansen 1991: 106 with nn. 246 and 247.

[123]The Heliaia in classical Athens is almost synonymous with *dikastērion*, a judging panel or the place (a building, a lawcourt) where the judges (*dikastai*) sit, or the "court system" more generally. At some time in the fourth century, a particular building became known as the Heliaia; the judges sat here when a full panel of one thousand or more judges were necessary. See Boegehold 1995: 3–5.

Heliaia is to assess whatever penalty the convicted offender is to suffer or to pay.

[76] How could a man more readily make a house destitute of heirs than by driving out those who are closest by kin circle to Hagnias while being himself of a different house, that of Stratius? Or again, how more readily do that than by demanding possession of Hagnias' estate on the pretence of relationship by kin circle, when his own name is foreign not only to the house of Hagnias but to that of his great-grandfather Stratius and foreign, too, to every other descendant of Buselus, as numerous as they are? [77] Well then, from where does the name Macartatus come? From relatives on his mother's side! Yes, for this man was adopted into the house of Macartatus the Prospaltian, his mother's brother, and he possesses that fine property as well![124] And so much a violator is he of family obligations that when a son was born to him, he "forgot" about installing him in the house of Hagnias as Hagnias' son—yes, he "forgot"—though he possesses Hagnias' estate and keeps claiming to be related on the male side![125] [78] Now, as for this son who was born to Macartatus, he has adopted him to Macartatus [I] on his mother's side into the deme of the Prospaltians; and as for the house of Hagnias, he has allowed it to become destitute of heirs insofar as this son is concerned; and he

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[124]Theopompus had adopted his son Macartatus II posthumously to Macartatus I (cf. Is. 11.49). It was unlawful for an adopted son to return to the house (*oikos*) of his natural father unless he left a legitimate son to take his place in the house of his adoptive father (see the Introduction to Dem. 44 at n. 8). Apparently Macartatus II did this when he adopted his son into the deme of the Prospaltians (43.78). It is undoubtedly a stretch of the truth for the speaker to say that Macartatus II possesses his uncle's estate; his son, now adopted to Macartatus I, possesses it.

[125]There was no legal requirement that Macartatus II, the rival claimant, should have been adopted to Hagnias II posthumously when he first entered Hagnias' estate; nor is there any requirement that his son should be so adopted: Macartatus II entered the estate as the heir to his father Theopompus. On the other hand, there is a moral constraint upon those claiming inheritances from a house becoming extinct to become adopted into it (cf. Dem. 44.27 and Is. 7.31).

goes on claiming that his father Theopompus was related to Hagnias. Yet Solon's law prescribes that the males and the children of males are to have precedence; well, you see how scornfully my opponent treats both the laws and Hagnias himself: he has adopted his son into the house of a kinsman of his mother![126] Could there be a man more willful or more disdainful of obligations?[127]

[**79**] Now this is not all, judges: there is also a common burial tomb for all those descended from Buselus (men call it "the tomb of the Buselidae," a large space enclosed in the traditional manner); in this tomb, all the rest of Buselus' descendants lie: Hagnias, Eubulides, Polemon, and all the others, numerous kinsmen, the descendants of Buselus, all of them share this tomb—[**80**] only the father and grandfather of our opponent Macartatus have no share in it but have made a separate tomb for themselves, at a distance from that of the Buselidae. Do they seem to you, judges, to be related in any way to the house of Hagnias—except for their seizing and holding in possession what does not belong to them? But whether the house of Hagnias and of Eubulides the cousin of Hagnias should become extinct or nameless—this has never been their least concern!

[**81**] For my part, judges, I have come to help, to the full measure of my abilities, those dear departed ones; but it is rather difficult to contend against the intrigues of these men. I therefore entrust this boy to your care, judges; do whatever seems most just to you. He has been adopted into the house of Eubulides and has been introduced to the phratry—not mine—but that of Eubulides, Hagnias, and Macartatus here. [**82**] And when he was introduced, while the other phratry members cast their ballot in se-

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[126] The speaker misrepresents the provision of the inheritance law (43.51) according to which males are to have precedence (see the Introduction to this volume at nn. 62 and 63); here he pretends that it means that even when adopting sons into the houses of kin, adoption into the paternal side of the family should have preference over the maternal.

[127] Some scholars think that Macartatus II may have taken this taunt seriously: for a man named "Hagnias son of Macartatus of Oeon" who has been plausibly identified as a son born to Macartatus after this hearing, see the Speech Introduction, n. 24.

cret, Macartatus here publicly voted in favor of the introduction of this boy as the son of Eubulides; for he declined to lay hold of the sacrificial animal and to remove it from the altar and thereby to make himself accountable for his decision; yes, he even received his portion of the meat from this boy and then went away just as the other phratry members did.[128] [**83**] Now think of this boy, judges, as the olive branch of a suppliant set before you on behalf of the dead[129]—Hagnias, Eubulides, and the other descendants of Hagnias—and that they implore you, the judges, to ensure that their house should not be emptied by these abominable beasts who are from Stratius' house and have never belonged to that of Hagnias. Do not permit them to have what does not belong to them but compel them to return it to the house of Hagnias for the kinsmen of Hagnias. [**84**] As I have come to help both the kinsmen who are dead and the laws that are set up for them, I beg you, judges, and I supplicate and entreat you, do not let this boy be the victim of their outrageous conduct, nor let his ancestors be treated with more contempt than they already are if these men should accomplish what they want. No, come to the aid of the laws and show concern for the dead so that their house is not deserted. If you do this, you will give a verdict that conforms to justice, to your oath, and to your own best interests.

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[128]Cf. 43.14nn.

[129]Euripides had used the metaphor of a suppliant's branch in *Iphigenia at Aulis* 1216–1217; it may not have been uncommon.

44. AGAINST LEOCHARES

INTRODUCTION

Aristodemus of the deme Pallene sues Leochares of the deme Otryne on a charge of false witnessing; the trial emerges from a dispute over the estate of Archiades son of Euthymachus of Otryne, who died decades earlier.[1] Aristodemus' (unnamed) son delivers the speech since (so he tells us) his father, a herald in Piraeus, is too inexperienced in public speaking to address the court himself. The defendant, on the other hand, may have delivered his speech (which is not preserved) jointly with his natural father Leostratus [II] (44.51 and 56).

The speaker claims that Leochares testified falsely during a preliminary meeting (*anakrisis*) with the Archon regarding the succession to Archiades' estate; the meeting had been preliminary to an adjudication (*diadikasia*) of the estate, which was to be awarded by the court.[2] Against the claim made at that time by Aristodemus that he was nearest kinsman, Leochares had objected that the estate was not adjudicable on the grounds that the deceased Archiades had legitimate children; he then provided testimony technically designated as a "protestation" (*diamartyria*)

[1] This oration has much to say about posthumous adoption. Since registration in the phratry and deme of the adoptee is essential for adoption of any sort, it is also essential to observe the deme affiliations (Pallene, Otryne, and Eleusis) of the disputants and their families in this dispute (phratry affiliation is not apparent in nomenclature). On the method of adopting a son posthumously, see the Introduction to this volume, II.3.

[2] See the Introduction to this volume, IV.2a.

that he was a legitimate son[3] because he had been posthumously adopted to Archiades and that as son of Archiades, he has the right both to enter the estate without a hearing and to eject from it anyone who tries to possess it.[4] If the plaintiff wins the suit for false witnessing, Leochares will presumably withdraw his claim to Archiades' estate; but Aristodemus will still have to proceed to an adjudication (whether other claimants come forward or not) and win the estate by the verdict of the Archon or court. On the other hand, if Leochares wins as a legitimate son, further adjudication of the estate is not likely, at least not until he dies.

The arguments and narrative of the speaker are highly repetitive. He is inconsistent or ambiguous on important points.[5] Our comprehension would be greatly enhanced if we were better informed about the rules that regulated posthumous adoption; either the speaker takes them for granted as if well known to the judges or else there were gaps that left uncharted terrain, which the speaker is desperately trying to fill in for the judges to his own advantage. We may recall that the speaker in Dem. 43 pro-

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[3]See the Introduction to this volume, IV.3.

[4]In inheritance cases, legitimate sons, including sons adopted *inter vivos* ("among the living"), can enter an estate without an adjudication. Against another person's claim, the "legitimate son" can make an objection and produce a witness to attest his assertion. Here it seems unusual that the person who objects (by saying "the estate is not adjudicable") and attests ("there is a legitimate son, Leochares") is one and the same. If the claimant (here, Aristodemus) disagrees with the objection and wants to maintain his claim, he must first sue the witness who gave the testimony (*diamartyria*) in support of the legitimate son for attesting false testimony. As in a *paragraphē* hearing, the suit for false testimony will eclipse the hearing for the adjudication of the estate.

[5]A sampling of inconsistencies and ambiguities: kinsmen posthumously adopted Leocrates [I] (grandfather of Leochares) to Archiades (44.19) and Archiades himself adopted him (44.46); Leostratus [II] (father of the defendant) posthumously adopted the defendant Leochares to Archiades (44.41)—and to his recently deceased natural brother Leocrates [II] (44.24); Leostratus [II] put Leochares' name on the protestation (44.41–42) and issued it (44.17 and 27), but more often Leochares is said to have done that (44.29 and passim). See further below, nn. 10, 13, 15, and 19.

vided what seemed to be (and probably is) a straightforward depiction of a posthumous adoption, namely, the introduction of the adoptee into the phratry of the deceased's adoptive father and subsequent introduction to the latter's deme.[6] Posthumous adoption had given Eubulides [III] a more secure position on the ladder to his (now nearer) kinsman's estate; the claimant's natural father had found posthumous adoption an extremely useful inheritance strategy for a supernumerary son. The speaker of this oration, on the other hand, attacks the institution—or at least what he perceives to be its abuse. Although he does not undermine the information about the execution of a posthumous adoption found in Dem. 43, he adds one preliminary step: before a person can be adopted posthumously, he must be awarded the estate by an *epidikasia* or "adjudication hearing" (44.36, 40, 43, 66); only then may he be introduced to phratry and deme and enter the estate of the deceased man as his adopted son.[7]

The speaker also mentions a legal provision that is found here and there in Isaeus' speeches: an adopted man who wished to return to his natal family must leave behind a legitimate son in his adoptive family.[8] In such a case, it appears that the son who is left behind must be adopted posthumously to the last heir who died in possession of the estate; perhaps this is because the son could no longer be considered the intestate heir of the man who returned to his ancestral family.[9] There is no need of an *epidikasia* in this instance, perhaps because the adopted son is required by law to be the legitimate (= natural born?) son of the man returning to his

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[6]See the Introduction to this volume, II.3; Dem. 43.11–15; and Is. 11.48–49.

[7]See below, n. 24.

[8]44.63; cf. Is. 6.44, 9.33, and 10.11.

[9]On the hypothesis offered here, when Leostratus [II] leaves the estate in the deme Otryne as the posthumously adopted son of Archiades of Otryne and returns to become heir to his ancestral estate in Eleusis, he loses his relationship to Archiades of Otryne and *so does his son* (he cannot inherit as grandson of Archiades because his father's relationship to Archiades has been erased); he therefore must adopt Leocrates [II] to Archiades so that he may become his heir. Cf. Dem. 43.77–78nn. Similarly, Rubinstein 1993: 58.

ancestral estate; lineage and proximity of relationship are not in question. We do not know if the law limited the number of sons who could successively be posthumously adopted to a deceased person. Perhaps the law did not foresee the circumstance.

In the opening sections (44.1–8), the speaker sets out the respective positions of his opponents and his father. The latter is the rightful heir because he is nearest kinsman to Archiades who originally left the estate. Leochares has no right to it—he is not a natural son of Archiades, nor was he adopted lawfully; his "protestation" (*diamartyria*) that he is a legitimate son is false. Leochares and his father, however, have a great advantage: they are rich and can pay for witness testimony, whereas the speaker and his father are poor. The matter is more complicated than a run-of-the-mill protestation, which usually requires a simple proof that the deceased has left behind a legitimate child. The defendants will instead argue they are adopted and should inherit in accordance with the rights of succession. Consequently, there is a need to present a great deal of family history. The following is derived from the speaker's account, which, of course, can only be an uncertain guide to the case.

Family History I: 44.9–14

The plaintiff's great-grandfather, Euthymachus of Otryne, had three sons and a daughter (see the *stemma* at the end of this Introduction). After Euthymachus' death, the sons gave their sister Archidice to Leostratus [I] of Eleusis. Of the three brothers, Archippus died while serving as trierarch on Lesbos; another brother, Meidylides [I], married, produced a daughter named Cleitomache, and wanted to give her in marriage to the third brother Archiades, but the latter preferred bachelorhood, agreed to leave the property undivided, and lived by himself in Salamis. Meidylides [I] then wed his daughter to Aristoteles of Pallene, and the couple produced three sons: the plaintiff Aristodemus; Habronichus (about whom nothing further is said); and Meidylides [II], who is no longer alive at the time of the trial. Because Archiades died without issue and the family (*to genos*, 44.11) is on the verge of extinction, and because the right to inherit belongs to the clos-

est male kin and Aristodemus fits that description (he is grandson of Archiades' brother Meidylides [I]), he has put in a claim for the estate. Testimony about these family relationships is read to the court, and so is the law on intestate succession (44.14).

Family History II: 44.15–23

After recapitulating the positions of both parties, the speaker goes back over some of the same family history. Now, however, he focuses on the conduct of the descendants of Archiades' sister and her husband Leostratus [I] of Eleusis at the time when Archiades died and Meidylides [I], his sole surviving brother, was out of the country (44.17–23). At this crucial moment, Leocrates [I], grandson of Archidice and Leostratus [I], was posthumously adopted, so the speaker claims, to Archiades and allegedly entered the estate as a son who had been adopted during the lifetime of the adoptive father—that is, without an adjudication hearing.[10] When Meidylides [I] returned, though annoyed at the turn of events, he nevertheless acquiesced.[11]

Many years passed; Meidylides [I] died; the plaintiff, out of respect for his grandfather's conciliatory conduct, did nothing. Then Leocrates [I], who had been installed in Archiades' house in the deme of Otryne, returned to his natal estate in the deme of Eleusis and left a son, Leostratus [II] (the father of Leochares the defendant) as heir of the estate in Otryne, having given him in adoption to Archiades (44.21–22). The plaintiff Aristodemus still did not act. Then Leostratus [II] followed suit: after having been

[10]The speaker's language is unclear concerning whether Leocrates [I] was adopted to Archiades while he was alive, in which case he could enter an estate without an adjudication, or whether he was adopted after his death, in which case (so the speaker implies) he must submit to an adjudication of the estate *before* his adoption. See 44.19n.

[11]Since Archiades died a bachelor and without children, Meidylides I, as brother of the deceased, was first in line to inherit by the law of intestate succession. That Leocrates [I] should be adopted to Archiades in Meidylides' absence and that the latter should not object suggest that Archiades may have himself adopted Leocrates [I] while alive (see 44.46n).

installed in Archiades' house, he returned to the Eleusinians and left behind his son Leocrates [II] in Otryne, having adopted him to Archiades (44.22). The indignant speaker asks whether such a succession of adoptions is not contrary to the laws (44.23).[12] We shall return to this question below.

Aristodemus Acts and Leostratus [II] Responds: 44.24–44

Leocrates [II], adopted to Archiades, took over the estate; Aristodemus had accepted even this (44.24; cf. 44.23). But instead of leaving a son behind and returning to Eleusis as two forebears have done, Leocrates [II] has died without issue. *Now* Aristodemus takes action. The estate is vacant, and Aristodemus is nearest kin, the speaker claims, not only to Archiades but also to the recently deceased Leocrates [II] since the latter's natural father Leostratus [II] has lost his legal relationship to him by returning to the Eleusinians (44.24–26).[13] Fastidiously awaiting the end of the funeral rites, Aristodemus and his son tried to take possession of the estate (a bit of grandstanding shenanigans on their part),[14]

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[12]As I suggested above, the law may not have restricted the number of successive "returns" and "adoptions" because it had not foreseen such a cycle. The speaker is misleading because he appears to manipulate the language of another law that prohibited adopted men (or certain categories of adopted men) from disposing of their property (and therefore prohibited them from "adopting" someone to inherit it) under certain circumstances; that law is paraphrased loosely at the end of this speech (44.68) and quoted at Dem. 46.14. The men who are prohibited from adopting do *not* include posthumously adopted men; see 46.14n.

[13]Whose estate was the subject of adjudication: that of Archiades or of Leocrates II? The question may have been determined at the preliminary hearing, which had been interrupted by the protestation that Leochares was Archiades' legitimate son. Note that at 44.42 and 61, the speaker appends the phrase, somewhat emphatically, to Archiades' name, "whose estate is at issue." Once Leochares had made his protestation, Aristodemus may have been compelled to change his original claim, if he had made it for the estate of Leocrates II. See below, n. 15.

[14]Only direct descendants were permitted by law to "enter" an estate; collaterals (such as Aristodemus) had to apply to the Archon for an

but Leostratus [II] ejected them, claiming it belonged to him (44.32). Aristodemus then applied for a preliminary hearing before the Archon to claim Archiades' estate. With the background of the case almost fully established at last, the speaker pauses for witness testimony regarding the adoptions, family filiations of the descendants of Archippe and her husband, and a proof that Archiades died a bachelor (44.30).

The final stage of the narrative is an account of the activities of Leostratus [II] and his son Leochares since the time of Aristodemus' application for a hearing. In response, Leostratus [II] in turn put in a deposit, allegedly as a "demesman of Otryne" or as "the legitimate son of Archiades," thereby reserving the right to claim the estate (44.34, 39, 42, 52).[15] Since he had previously returned to the Eleusinians, he took steps to become, once again, the Otrynian son of Archiades: he enrolled himself on the Assembly list of the Otrynians, persuaded the Demarch (at least in theory) to register his name on the official list of demesmen, but failed to be registered on that list as the "adopted son of Archiades" (44.35–39).[16]

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adjudication hearing and await the decision. Direct heirs could "eject" other claimants from trying to seize the property. Cf. the Introduction to Dem. 48 at n. 5.

[15]It is not clear whether the Archon accepted the deposit for Leostratus' claim "as an Otrynian son of Archiades" (44.34, 39, 42) thinking it was true (or being bribed to think so) or with the intention of assessing the claim later. Since at a preliminary hearing *Leostratus'* claim is replaced by Leochares' protestation that he is the Otrynian son of Archiades, we may assume that Leostratus withdrew his claim. There may have been no existing document to (dis)prove the speaker's statement regarding the details of Leostratus' claim.

[16]When the speaker says that Leostratus "returned to the Eleusinians" (44.44 and passim), he most likely means he had reenrolled in the deme of Eleusis. Harris 2006 [1996]: 367–369 argues against the natural interpretation of this and a similar phrase ("although he is a demesman among the Eleusinians," 39); he claims that the phrases do not mean that Leostratus reenrolled in Eleusis, only that he now resided in Eleusis but remained registered in Otryne. But by saying that Leostratus was a demesman of Eleusis

Not a quitter, Leostratus [II] next tried to adopt his son Leochares to Archiades: he succeeded in registering him as Leochares son of Archiades' on the deme list (but before the scrutiny had taken place) and had him registered with Archiades' phratry irregularly, after the deme registration. A couple of days later, at the preliminary hearing before the Archon,[17] he entered his son's name as the legitimate son of Archiades in a protestation which Leochares delivers (44.41–42). This is not right, the speaker asserts: only after the jury has given a verdict in an adjudication of the estate should a son be adopted to the deceased (44.43; cf. 44.36, 40). The speaker pauses once again for witness testimony, this time from phratry members and demesmen, to attest the return of Leostratus to the Eleusinians, the death of Leocrates [II] without offspring, the irregular sequence of registrations (deme followed by phratry) for Leochares—and all the other activities of Leostratus [II] and Leochares that he has mentioned so far (44.44).

Legal Reasoning Run Amok?

The upshot of this complex and rather muddled account is that plaintiff and defendant have taken opposing positions regarding the succession to the estate of the deceased. The focal point of the two positions is, surprisingly, the estate of Archiades rather than that of his adopted son, the recently deceased Leocrates [II]. Plaintiff and defendant have determined their positions to some degree by acute observation of each other's conduct: for example, even before the plaintiff files a claim, the defense has witnessed and thwarted Aristodemus' attempt to take possession of Archiades' estate after the burial of Leocrates [II]; the plaintiff, for his part, has apparently followed Leostratus about the deme of Otryne and witnessed and thwarted his attempt to register him-

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(44.39), the speaker surely means that he was registered in the deme and not just that he resided in it.

[17] This is presumably the *anakrisis* (preliminary hearing) for the adjudication.

self as the adopted son of Archiades. The defense had (presumably) foreseen that the plaintiff had the advantage of greater proximity both to the long-deceased Archiades and to his recently deceased adoptive son Leocrates [II] (he is grandson of a brother of the former and first cousin once removed to the latter). Accordingly, Leostratus [II] has tried to adopt Leochares to the long-dead Archiades and not to Leocrates [II]. The recently deceased has been displaced by a kinsman dead for decades.

The legal arguments in this suit for false witnessing are directed against the protestation of Leochares that "the estate of Archiades is not adjudicable because he has legitimate children [*gnēsioi*] validly according to the ordinance" (44.46). Against this, the plaintiff argues that a "legitimate son" is a "natural son" (i.e., one born of the father) and will pit the "legitimate son" (= "natural son") against the "adopted son" (§49). The usual meaning of "legitimate son," however, is a "son born of Athenian parents" and so includes adopted sons; the usual antonym of "legitimate son" is "bastard."[18] Having declared that a legitimate son is a natural son, the speaker need only conclude with a statement that Leochares' protestation is false: "Archiades has no legitimate son because he died without issue—he has no natural son." But the speaker does not draw this conclusion and instead drags out his fallacious reasoning.

At the end of the speech, he adduces two laws to prove that the protestation is false. At this point, he has seemingly accepted the first three posthumous adoptions (though he waffles in the course of the oration).[19] The last adoptee (Leocrates [II] son of Archia-

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[18]For the use and meaning of these terms, see notes at 44.2, 5, 22, 49, and 64. Some scholars (e.g., Gernet 1957: 137 n. 4 and 149 n. 1; Rubinstein 1993: 59) think that "legitimate son," when used in the expression "a returning son must leave a legitimate son behind," in fact does, exceptionally, refer to a "natural son"—i.e., the father returning to his natal estate cannot *adopt* a son to leave behind in the adoptive house. For a different view, see below, text at nn. 24–26.

[19]The speaker claims that it is contrary to law for an adoptee to leave adopted sons in an adoptive house and return to his natal estate (44.23), but he accepts the same conduct elsewhere (44.24–25, 65).

des), however, has died childless, and specifically about him, he claims, "It surely isn't right for an adopted son to introduce other adopted sons into a family, but it is right to leave behind sons born to him and when this fails, to restore succession to qualified kinsmen" (44.63). To prove his point, he cites a provision of a law: "A man [i.e., an adopted man] is [allowed] to return to his own family upon leaving behind a legitimate son."[20] He explains the lawgiver's meaning this way: it is not right for the returning man to adopt, "for it is impossible for a man to leave behind a legitimate son (*gnēsion*), unless a natural son has been born to him" (44.64). But this oblique argument does not prove that the deceased Leocrates [II], an adoptee, cannot himself acquire an adopted son! "The son returning to his ancestral estate" would appear to have nothing to do with succession to Leocrates [II]: the latter was not returning to Eleusis; he died in Otryne.

The second law he adduces is the Solonian law on wills, one that some scholars interpret as forbidding any adoptee to adopt a son.[21] If the law does have this meaning, then it might be stretched here in this way: Leochares claims he is a legitimate son of Archiades because he was posthumously adopted to him, but Leocrates [II] was himself posthumously adopted to Archiades, and an adopted son cannot in turn adopt.[22] If such is the meaning of the law, why has the speaker waited until the end of the speech to provide it? Moreover, why has he spun out the following interpretation: "It is not permissible for those who were adopted to dispose of property, but if, while alive, they leave behind a legitimate son, they can return, and if they die, they should give the inheritance to those who were kinsmen of the adoptive father from the very beginning" (44.68). This interpretation has little to do with the Solonian law on wills (as we know it) and much to do with the differences between returning adopted sons who are to leave legitimate sons behind and adopted sons who die before

[20] The provision is also cited or alluded to at Is. 6.44, 9.33, and 10.11.

[21] The law that has been transmitted to us is cited at Oration 46.14; see the notes there.

[22] Stretching the law this way prohibits an adopted son to return to his natal home if his father did this before him.

(or instead of) returning. Thus, the speaker has extrapolated from the law on wills to find a legal theory appropriate to the situation of a posthumously adopted son. Why?

Granted that the writer of the speech is terribly clumsy—his waffling one way and another on important issues is testimony to that. The problem, however, may lie deeper. It is possible that there was little legislation that specifically addressed the status of the posthumously adopted son. Posthumous adoption may have become an inheritance strategy after Solon's legislation on wills[23]—or it may have existed long before but had never become the subject of law since the family may have exerted ultimate control—in the sense of providing consensus about the adoptee, promoting the candidate before the Archon and court if need be, and agreeing to have him registered in the phratry and deme (if he was old enough) of the deceased kinsman who died childless.[24]

The only provision we know of that specifically has to do with posthumous adoption is that about the returning son: if he returns to his natal estate, he is to leave behind a legitimate son. Whether the "legitimate son" in this particular instance was by law exceptionally restricted to a natural son (as some scholars think) can-

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[23]Certainly the provisions of the Solonian law as we know them from Dem. 46.14 and elsewhere (see Dem. 46.14n), especially the provisions regarding the mental capacity of the testator, are not at all consonant with the posthumous adopter, who has no say in the matter. But a posthumously adopted son might also during his lifetime wish to adopt, and in this case the provision would seem to grant him the right to do so.

[24]The first adoption (whether *inter vivos* or testamentary: see 44.46n) took place, it seems, with the consensus of kinsmen during Meidylides' absence; and it may be that it was enough for kinsmen to accept the next two posthumous adoptees as well. Note that the family council (so to speak) that meets after the death of Comon in Dem. 48.7–10 did not provide an heir for posthumous adoption (see the Introduction to Dem. 48 at nn. 11–12). Rubinstein 1993: 28 and 44 argues that the law required the posthumous adoptee's previous confirmation by a court verdict as nearest kinsmen ("intestate heir"). The thesis is attractive, but the evidence (aside from Oration 44, the descendants of two *epiklēroi* who do not need to undergo an adjudication hearing: see the Introduction to Dem. 43, n. 5) is insufficient for confidence.

not be demonstrated; it may have been the norm and expectation without having been explicitly stated.[25] Again, whether it was required by law that the legitimate son left behind by a "returning" adoptee was to be adopted to the last direct heir who died in the adoptive house cannot be demonstrated; it may have become customary and it certainly was practical.[26] Moreover, probably the law did not foresee a series of posthumous adoptions in one line, occurring as the successive heirs (each descended by blood from the preceding one) returned to the ancestral house.

The observations of the last two paragraphs are speculative but do provide an explanation for the tentative and sometimes contradictory argumentation of the speech. If the fundamental observation is correct, that there was little legislation concerning posthumous adoption, then much of this speech is based on what we might call equity rather than law. In fact, that is precisely the way the speaker uses the series of posthumous adoptions, as an argument of equity. At the end of his narrative (see above, "Family History II"), the speaker, indignant at the duration of the original adoption, contrary to the laws (so he alleges), through three successive generations of men, asks, "Well, isn't it contrary to the laws for a man who is himself an adopted son to leave behind adopted sons and return home?" (44.23).

Clearly there is something not right about the successive installation of heirs as their fathers return to the natal home. Archiades has had, one after the other, three sons posthumously adopted to him but no grandsons or great-grandsons; no family has taken root. Instead, one line is inhabiting two estates; the adopted line is not fertile enough to make a real go of the adoptive house, and perhaps a different line should be given a chance. This is not a matter of law (which does not exist for this situation) but of equity. Of course, the defendant might also be expected to provide an answering reply, likewise based on equity: "We have con-

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[25] If a returning father had no son of his own to leave behind, it is hard to imagine that in a situation in which there were living kinsmen with means at their disposal, he would adopt anyone (if he adopted at all) but the nearest kinsman; to do otherwise would be asking for an expensive adjudication.

[26] See above, n. 9.

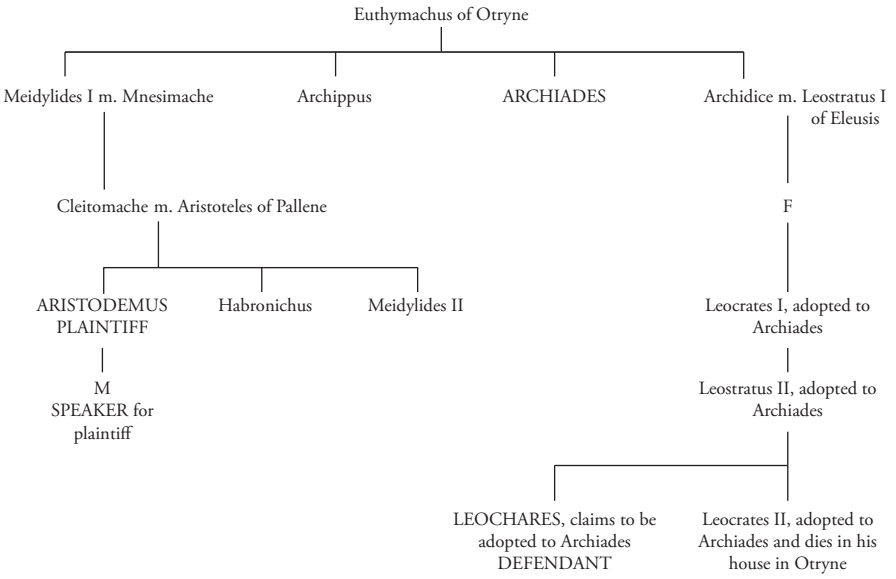
tinued the house of Archiades through three generations; whereas we have followed custom's dictate in leaving behind a son begotten of the preceding heir in the two adoptions following the inaugural one, are we to lose the house we have so well filled until now, because of the unforeseeable accident of the death of the last possessor of the estate? And in truth the new adoptee is by blood lineage son of the second adoptee and nearest blood kinsman to the last possessor of the estate."

Speculative arguments have been offered to suggest a rationale for the speaker, who seems unable to produce a law that specifically addressed succession to a posthumously adopted heir. The Solonian law on wills does not fit the situation. If, as maintained here, there was a gap in the law that had been filled by family consensus and decision-making, then we have an instance in which two parties use the lawcourts to decide their opposing propositions for filling the gap in the law.

The Date and Authorship of the Speech

The oration cannot be precisely dated, and scholars have made different proposals, based on different calculations of the death of Archiades' brother Archippus in Methymne while serving a trierarchy (44.9–10). Gernet suggests that a date of 412 fits best for that event (Thuc. 8.23).[27] Meidylides I, the maternal grandfather of Aristodemus and brother of Archiades, married shortly after the death of the latter; his only daughter Cleitomache married Aristoteles of the deme Pallene, and they produced three sons, one of whom was Aristodemus (44.9–10); the son of Aristodemus is still young at the time of this trial (44.1). It might then be conjectured (very generally) that Meidylides married ca. 410; that his daughter Cleitomache married ca. 395 and bore Aristodemus soon thereafter; Aristodemus may have married ca. 365 and produced a son soon thereafter. If so, then the earliest this case may have been brought would be ca. 345–340. Davies argues, however, that

[27] Gernet 1957: 130 n. 2.


Euthymachus of Otryne
Meidylides I m. Mnesimache
Archippus
ARCHIADES
Archidice m. Leostratus I of Eleusis
Cleitomache m. Aristoteles of Pallene
F
ARISTODEMUS PLAINTIFF
Habronichus
Meidylides II
Leocrates I, adopted to Archiades
M SPEAKER for plaintiff
Leostratus II, adopted to Archiades
LEOCHARES, claims to be adopted to Archiades DEFENDANT
Leocrates II, adopted to Archiades and dies in his house in Otryne

Archippus' death may have occurred during the revolt in Mytilene in 428 or on some earlier unknown occasion.[28] Following the same set of calculations used by Gernet, but starting from an earlier date, the case could have been brought at the latest between 361 and 356.

Scholars have been loath to ascribe the speech to Demosthenes: its inferiority (as apparent in features noted already such as repetitiveness, inconsistencies, specious treatment of "adopted son" vs. "legitimate son," as well as in stylistic deficiencies)[29] is the main criterion for removing it from that author's oeuvre. The speaker lacks clarity on important issues, for example, when he makes Archiades instead of the recently deceased Leocrates [II] the focal point of the legal argument without explanation. Such deficiencies can be ascribed only to a logographer far less talented than Demosthenes.

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[28]Davies 1971: 194.

[29]For stylistic deficiencies, see Blass 1893: 570–572.

44. AGAINST LEOCHARES, CONCERNING THE ESTATE OF ARCHIADES

[1] It's the fault of this Leochares here, judges, that he himself is being tried and that I, though so young, am pleading a case before you: for he is claiming the right to inherit an estate that does not belong to him, and to achieve that end he has produced a false protestation [*diamartyria*] before the Archon.[30] [2] Since the law grants the right to succeed [*anchisteia*] to the nearest of kin[31] and since we are kinsmen of that Archiades who left the estate at the outset, it's we who must ensure that his house [*oikos*] does not become extinct[32] and that others who have no right whatever to the property do not become its heirs.[33] The defendant, who is neither a natural son of the deceased nor adopted in accordance with the laws, as I shall show, has nevertheless rashly produced a false protestation in an attempt to rob us of our inheritance. [3] I beseech you, oh judges, if our cause is legitimate, aid my father and myself and prevent men who are poor and without influence from

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[30]"Protestation" is a translation of the Greek noun *diamartyria* and refers to a special kind of witness testimony delivered before the Archon: see the Speech Introduction, n. 4. The noun and its cognate verb (*diamartyrein*) appear almost sixty times in the course of this speech. I usually translate the noun as "protestation," sometimes simply as "testimony" (when it is clear that the word does *not* refer to ordinary witness testimony, *martyria*), occasionally as "document." I translate the cognate verb with similar variety. The "protestation" is delivered orally before the Archon, but a written document is also presented at that time (cf. Is. 4.2). The document is cited before the court in 44.45 of this oration and is discussed in 44.46–56.

[31]The "right to succeed" translates the Greek term *anchisteia*. A document purporting to be the law of succession is inserted in Dem. 43.51 and that law was apparently read to the court in this speech at 44.14; see the Introduction to this volume, V.

[32]On the meaning of *oikos* ("house," "property," "family"), see the Introduction to Dem. 43 at n. 20.

[33]According to the speaker's depiction, the last possessor of Archiades' estate, Leocrates II, died childless; since he adopted no son during his lifetime, the estate must now revert to a kinsman who is most closely related to Archiades, the original possessor.

being overpowered by a lawless cabal.[34] For we have come here trusting in the truth, and we shall be content if we are allowed to enjoy our lawful rights; our opponents, on the other hand, have consistently relied upon intrigue and bribery, with good reason, as I think: finding it easy to tap the funds of others, they have a corps of men ready to speak in their behalf and supply them with false testimony. [4] My father here—it's obvious—enters this contest with manifest signs of poverty, which you all see, and of inexperience in the civic arena: he has been a herald in Piraeus for a long time, and this is a sure indicator not only of a lack of general resources but also of the absence of leisure for pursuing political activity. Indeed, a man of that sort must spend the whole day in the agora. If you reflect on that, then you must conclude that we would never have come before you without confidence in the justice of our cause.

[5] Well then, you will become better informed about such matters as this speech proceeds. Right now I think I should instruct you about this protestation and the trial. If, judges, on the basis of this protestation Leochares intended to prove in his defense that he is a legitimate son [*gnēsios*] of Archiades,[35] there would be no need for any long speeches nor for you to track our kin filiations to a distant past. [6] But since the assertions in his protestation are of a different kind, and most of their argument will be that they were adopted and would rightly inherit the estate as legitimate sons [*gnēsioi*] in accordance with the rights of succession, I must therefore go back a bit through the details of lineage; for if you understand these clearly, you'll not be misled by their argument.

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[34]The speaker is acting as advocate (*synēgoros*) for his father, who is the plaintiff. Rubinstein 2000: 34 thinks it "quite likely that the judges would have perceived him [the speaker] as joint party to the case rather than as a *synēgoros* acting on his father's behalf."

[35]"Legitimate" (*gnēsios*), here for the first time in the speech, means a son born to Athenian citizens and is often used in opposition to a "bastard" (*nothos*); the claim that one was a legitimate son and therefore had the right to enter an estate without an adjudication was usual in a protestation. For the speaker's later use of the term "legitimate son," see 44.22n and 49n.

[7] Today's trial is really a process for adjudicating an estate;[36] title to it is claimed by us on the basis of kinship and by them on the basis of adoption. We admit openly before you that all adoptions must be valid if they are made rightly in accordance with the laws. Therefore, keeping in mind the basis of our respective claims, if they prove to you that the laws grant them what they have asserted in their protestation, vote that the estate belongs to them. [8] And even if their arguments from the laws are inadequate but clearly are fair and humane, in that case we shall also yield to them. But to show you that we rely not only on our being nearest of kin but on many additional considerations, I'll tell you first about the family from which the estate originated; if you follow closely this part of the case, I doubt you'll fall behind in any of the rest.

[9] To begin with, judges, Euthymachus of Otryne[37] had three sons, Meidylides I, Archippus, and Archiades, and a daughter whose name was Archidice. When their father died, the sons gave Archidice in marriage to Leostratus [I] of Eleusis.[38] As for the three sons, Archippus died while serving as trierarch in Methymne,[39] and a short time afterwards Meidylides I wed Mnesimache the daughter of Lysippus of Crioa. [10] He had a daughter named Cleitomache whom he wanted to give in marriage to his bachelor brother;[40] but when Archiades said he preferred to

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[36]In fact, the trial is a lawsuit for false testimony; it had its origin in the preliminaries to an adjudication hearing that ended when the speaker's father objected to Leochares' protestation, claiming it was false (cf. 44.13n). If the speaker wins this case, he will presumably apply once again to the Archon for an adjudication of the estate. See the Speech Introduction at nn. 2–4.

[37]On the importance of deme affiliations (e.g., Otryne, Eleusis, Pallene, Crioa) in this oration, see the Speech Introduction, n. 1.

[38]After the death of a father, sons have the right to give their sister away in marriage; see the Introduction to this volume, I, at n. 17.

[39]See the Speech Introduction at nn. 27–28.

[40]Marriage between uncle and niece was not unusual (cf. Lys. 32.4; Dem. 59.2, 22). It is likely that Cleitomache was an only child. As an heiress (*epiklēros*), her nearest kinsman might be obliged to marry her when her fa-

stay unmarried and when for this reason he even agreed to leave the estate undivided[41] and then went away to live by himself in Salamis, Meidylides [I] at once gave his daughter away in marriage to Aristoteles of Pallene, my grandfather. Three sons were born to him: Aristodemus, my father here; my uncle Habronichus; and Meidylides [II], who is now dead. [**11**] The right of the family to inherit—of *our* family to whom the estate belongs—is essentially this, judges: since we are closest of kin to Archiades on the male side of the family and since we believe it right both that we should inherit his estate on the basis of this law and at the same time prevent his family [*genos*] from becoming extinct, we applied for a hearing of our claim before the Archon;[42] but these men who possess the property illegitimately have now protested our claim, relying essentially on adoption but also maintaining they are kinsmen. [**12**] What sort of adoption this is we shall explain later; but in regard to the family, you must learn now that they are less closely related than we.

One principle is agreed upon, that among the heirs, males and descendants of males are to prevail;[43] simply put, in the absence of children, the law grants inheritances to the nearest kin on the male side. And we are these kin, for they admit Archiades died childless, and we are closest to him on the male side. [**13**][44] For

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ther died. Meidylides I may then have been looking to the future in selecting Archiades as a husband. In any event, she married a demesman of Pallene, possibly a kinsman on her mother's side.

[41] For different arrangements regarding the division of an estate between brothers, see Dem. 47.35n.

[42] Harrison 1971: 88–89 points out that a clause in the law inserted at Dem. 46.22 allows the inference that claimants apply for a *preliminary* hearing (the *anakrisis*) and at a later point are assigned a day for the chief hearing; see 46.22n. The phrase used by speakers to refer to this application is condensed and idiomatic (usually only "we applied before the Archon regarding the estate"); cf. 44.29 and 31.

[43] The law of intestate succession is cited at Dem. 43.51; see 44.2n.

[44] The manuscripts have a sentence here that makes no sense: "Moreover, also through women, we, the same kinsmen, are the heirs." Along with many editors, I have deleted it.

Meidylides [I] was the brother of Archiades, and Meidylides' daughter is my father's mother, so that Archiades, whose estate is the subject of the adjudication we are engaged in,[45] is the paternal uncle of my father's mother, and Archiades had this relationship on the male side and not the female. But Leostratus [II] who is present in court is more remote in kinship[46] and is a kinsman to Archiades on the female side; for the mother of his father Leocrates was the niece of this Archiades and of Meidylides I, as descendants of whom we claim the right to obtain the estate.

[14] First, then, judges, the secretary will read the depositions to you to prove that our kin filiations are just as we say; after that, he will read the law itself, which grants estates to family members and to the nearest kinsmen on the male side. For this in essence is the chief argument of our case and forms the basis on which you will give your vote under oath. [*To the secretary*] So please call the witnesses here and read the law.

[WITNESSES. LAW][47]

[15] Well then, judges, that is how matters stand with their family and ours; accordingly, those who have shown a closer relationship on the basis of the testimony itself should rightly inherit, and the desperation of the man who filed the protest should not prevail over your laws. Indeed, if they prop themselves up

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[45]An adjudication (*epidikasia*) is the procedure of claim and award of an estate; when the claim is disputed, the term *diadikasia* is usually used. The trial that is underway is neither an *epidikasia* nor a *diadikasia*, but a trial for giving false testimony. It interrupted the preliminary hearing for an adjudication that had been set in motion by the plaintiff. See the Speech Introduction at nn. 2–4.

[46]Leostratus [II] is father of the defendant (Leochares) and is by birth grandson of Archiades' *sister* whereas Aristodemus is grandson of Archiades' *brother*; brothers of the deceased and brothers' descendants inherit ahead of (and exclude) sisters and their descendants in the Athenian law of intestate succession. Leochares, as son of Leostratus [II], is more remote; see 44.26nn and the Introduction to this volume, V.

[47]See 44.2n.

with the adoption—and we shall explain how that came about—yet surely when the adopted son has died childless and when the house was deserted until the time of our filing our claim, how is it anything but proper for the nearest kinsmen to recover the inheritance[48] and for you to give your aid—not to men who are able to concoct a case but to citizens who have been treated unfairly? [16] Indeed, if it were up to us alone, now that we have explained the family relationship and the protestation itself, we would step down from the podium without any additional argument—the most important points, I daresay, would've been made, and we wouldn't bother you any further. But since our opponents do not rely on the laws but on a preemptive head start in this business and an early entry into possession of the estate,[49] and since they will invoke these acts as proofs and say *they* are the heirs, it seems I must address these matters as well and make plain that our opponents are the worst bullies in all the world.

[17] To begin with, judges, Meidylides [I] and Archiades gave away their sister in marriage to Leostratus [I] of Eleusis. Later, a daughter of this sister of theirs who was given away in marriage produced a son Leocrates [I] the father of Leostratus [II]. Consider how distant a relative he is to Archiades, whose estate he made the object of the protestation![50] Now, to continue: Archiades didn't wed, but Meidylides I, his brother and the grandfather of my father here, did. [18] And still they didn't divide the property, but each had sufficient means; so Meidylides [I] remained in the city, and Archiades lived in Salamis. Shortly afterwards, while

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[48]The position outlined here (when a posthumously adopted son dies childless in an "adoptive line," then the estate reverts to the closest kinsmen according to the rankings of the *anchisteia*) will be repeated again and again in the speech (44.15, 24, 43, 47, 63), with the addition that the court should determine who the nearest kinsmen are; see 44.40n.

[49]"Entry" into an estate was permitted to legitimate sons (which included sons adopted *inter vivos*). Archiades' estate has passed through three generations of the (natural) descendants of Leocrates [I] without entering the court system. See 44.19n.

[50]In the course of the speech, sometimes it is Leostratus who issued the protestation, sometimes Leochares; see the Speech Introduction, n. 5.

Meidylides [I] the grandfather of my father happened to be journeying abroad, Archiades fell ill—Meidylides [I] was absent—and died, a bachelor to the very end. The proof? A *loutrophoros* stands on Archiades' tomb.[51] [**19**] At that critical moment Leocrates I, the father of this Leostratus [II] here, on the grounds of kinship on the female side, constituted himself as the adopted son of Archiades and thus entered the estate as a son who had been adopted while Archiades was still alive.[52] Upon his return, Meidylides [I] was annoyed at what had happened[53] and was all set to take Leocrates [I] to court, but with relatives beseeching and urging him to allow Leocrates [I] to be in possession of the estate[54] as the adopted son of Archiades, Meidylides [I] yielded—not because he had been defeated in a lawsuit but because he had been thoroughly tricked by these men and then, too, because the persuasion of his relatives had worked.

[**20**] After this episode, Meidylides [I] died, but Leocrates [I] kept Archiades' estate and was heir for many years as the adopted son of Archiades. We for our part respected the arrangement—af-

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[51]The *loutrophoros* was a vessel for carrying the water for a nuptial bath and decorated with wedding scenes. It was placed on the tombs of young people who died unmarried since they were regarded as being married in death. See Oakley and Sinos 1993: 6 with n. 10 and figs. 92–95 and 122.

[52]For the three methods of adoption in Athens, see the Introduction to this volume, II.3. The speaker's phraseology here is ambiguous; does he mean (1) that Leocrates [I] entered the estate illegitimately as the posthumously adopted son (as the speaker seems to suggest elsewhere) or (2) that he maintained he was adopted by will or during the lifetime of the deceased? See 44.46n, where the speaker (slips? and) says that Archiades adopted him (i.e., *inter vivos* or by testament?). A son adopted *inter vivos* had the right to enter an estate without an adjudication.

[53]The estate of Euthymachus, father of Meidylides and Archiades, had not been partitioned after his death (44.10 and 18); when Archiades died, one might expect that the estate would finally be divided between Meidylides [I] and the adopted son of Archiades. The point is not made explicit and the speaker always refers to the estate as "the property (*ousia*) of Archiades" just as if "the Eleusinian branch had taken over and continued to hold Archiades' entire estate" (Davies 1971: 196).

[54]Lit., "to be in the house [*oikos*]." Cf. 44.2n.

ter all, Meidylides [I] had acquiesced to it. But a little later—pay close attention to my next points, judges—[21] Leocrates I, although he was the adopted son of Archiades, left Leostratus [II] here behind as the legitimate son in the house and himself returned to the Eleusinians, whence he originally came. Even then, we did not intervene in any of the arrangements concerning Archiades' estate but abided by the same terms as before.

[22] Well then, although Leostratus [II] here was the adopted son who had been left behind in the house of Archiades, he in turn got up and went back to the Eleusinians, as his father had done, leaving behind a legitimate son [*gnēsios*] and thereby made the original adoption operative through three substitutions—contrary to the laws.[55] [23] Well, isn't it contrary to the laws for a man who is himself an adopted son to leave behind adopted sons and return home? He has continued doing this even to this day, and they count on robbing us of the inheritance by this scheme: first, by making money from Archiades' property and supporting their children with it, and then, by always returning from there to the property of their natal father, they preserve the latter intact while skimming off the former.

[24] Notwithstanding so irregular an arrangement, as I said earlier, we acquiesced in everything. For how long? Until Leocrates [II], the son whom Leostratus [II] had installed in Archiades' house, died childless. And since he died childless, we, the nearest relatives of Archiades, claim that we should inherit his property and that he [Leostratus (II)] has no right to adopt a son

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[55]It was not illegal for an adopted son to return to his natal home, provided he left a legitimate son in the house into which he had been adopted (Is. 6.44, 9.33, 10.11). Note his use of the word "legitimate son," which he will explicitly equate with "natural" or "begotten" son in 44.49; the sons left behind as legitimate ("natural") sons, he will insinuate, are adopted sons (i.e., adopted posthumously). The speaker objects that there have been three consecutive adoptions over three generations: the lawgiver did not intend, by the permission to return to one's natal home, to create a swing door forever. But there may have been a gap in the law, and Leostratus' natal family may be exploiting the law rather than breaking it. See the Speech Introduction.

to the deceased man who was himself an adopted son, all with the aim of depriving us of our due![56] [**25**] For if Leocrates [II] himself had carried out an adoption while alive, although this act would have been unlawful,[57] we wouldn't have opposed him. But since he neither produced a natural son nor adopted one while alive, and since the law grants inheritances to the nearest relatives, how are we not the right people on both grounds to be awarded the estate? [**26**] In fact, we are nearest by kin circle both to Archiades, to whom the estate belonged at the outset, and also to the adopted son, Leocrates [II].[58] For the latter's natural father, Leostratus [II], upon returning to the Eleusinians, lost his legal relationship to Leocrates [II],[59] whereas we, who were among the members of the family [*genos*] he joined, had the closest relationship—we were sons of his first cousin.[60] Accordingly, we claim the estate as kinsmen of Archiades, if you like—but also, if you like, of Leocrates [II]; for since the latter died childless, no one is more closely related than we.

[**27**] It's because of your conduct, Leostratus, that the house has been emptied: your main concern was a relationship with property, not with the men who adopted you. So long as no one

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[56]The speaker carelessly here has Leostratus [II] posthumously adopting Leochares to his brother Leocrates [II] (who had been posthumously adopted to Archiades) instead of to Archiades himself (who was not an adopted son). See the Speech Introduction, n. 5.

[57]Many scholars would agree that a son adopted *inter vivos* could not adopt according to the Solonian law on wills. See 46.14nn and Harrison 1968: 84–87 (for discussion of other views).

[58]Whose estate is at issue? See the Speech Introduction, n. 13.

[59]Leostratus II, when he returned to the Eleusinians, was no longer a member of Archiades' family in Otryne to which the deceased Leocrates [II] was adopted. He therefore lost his lawful relationship of "father" to his (natural) son Leocrates [II].

[60]The argument assumes that the adoption of Leocrates [II] to Archiades is lawful. Accordingly, the plaintiff is a first cousin once removed to the deceased Leocrates [II] son of Archiades, whereas Leostratus [II] is a first cousin twice removed from him.

disputed the estate after Leocrates' death, you didn't adopt anyone as Archiades' son; but when we, his kinsmen, entered the picture, then you went ahead with an adoption to get your hands on the property. You also allege that Archiades, to whom you were adopted, had no property—yet you protest our claim, aiming to drive out Archiades' acknowledged kinsmen.[61] Tell me, if there is nothing in the estate, what do you lose if we inherit this nothing? [**28**] But in fact, his shamelessness and greed are such, judges, that he thinks it right not only to return to the Eleusinians to keep his paternal estate but also to be master of the estate to which he had been adopted even if there is no son in the house. He manages all this easily, too—for he has a great advantage over us who are poor and without influence—he can tap the resources of others. This is why I think you ought to aid us: we don't want more than our due but are content if we are allowed to get what is lawfully ours. [**29**] For what ought we to do, judges? Since the adoption has lasted through three men in succession and since the last son who was installed as heir has died without issue, should we not recover what belongs to us at last?[62]

Well then, with this as our just claim, we applied for a preliminary hearing about the estate before the Archon.[63] But Leochares here, with his rash and false protestation, thinks it right, contrary to all the laws, to deprive us of the inheritance. [**30**] First, then, to prove that I have spoken the truth about the adoptions and the relationships of these men, and that a *loutrophoros* stood on the tomb of Archiades, we would like to read these depositions. Immediately after that, we shall explain all the rest to you clearly and so prove that these men have composed a false protestation. [*To the secretary*] Please take the depositions that I mention.

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[61]It is conceivable that Archiades' property had been indebted and that the first adopted son, Leocrates I, had cleared the slate. In this hypothetical situation (which is similar to that in Is. 10), Aristodemus may be seeking what was in fact the property of the last possessor of the estate.

[62]Cf. 44.22, where the death of Leocrates [II] without issue was not mentioned.

[63]See 44.11n.

[DEPOSITIONS]

[31] Well then, the history of the case and the plain and simple rights of succession are as I have stated, judges, and I daresay you have heard the major events from the beginning. Now I think I must tell what they have done and how they have treated us after our application for a hearing about the estate. In my opinion, no other men involved in an inheritance dispute have been treated so lawlessly as we have. **[32]** For after Leocrates [II] died and his funeral rites were carried out, when we were trying to take possession of the estate—for he had died childless and unwed—this Leostratus [II] here ejected us, claiming that it belonged to him.[64] And as for his preventing us from performing any of the customary rites for the deceased—that was reasonable seeing that he was the father of the man even if his action was unlawful; for it's reasonable for the natural father to have charge of the burial and, next after him, for us his relatives, to whom the deceased was related by virtue of the adoption. **[33]** But after the customary rites had been performed, by what law did he manifestly eject us from the property—when the house was deserted and we were nearest of kin? "By Zeus," he'll say, "because I was the father of the deceased!" Yes, but he had returned to his natal house and no longer was master of the property—he left his son behind in control of that! Otherwise, what good are the laws?

[34] Well then, to make a long story short, after the ejection from the property, we applied to the Archon for a hearing about the estate on the grounds, as I've said, that the deceased had no natural son and that a lawful adoption had not taken place. After these events, this Leostratus [II] here paid the court deposit as the son of the deceased Archiades[65]—without having addressed the fact that he had returned to the Eleusinians and that adopted

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[64]See the Speech Introduction at n. 14, and the Introduction to this volume, IV.1.

[65]Regarding his claim to be "son of the deceased Archiades," see the Speech Introduction, nn. 13 and 15. At this point in the history of the dispute, Leostratus II, by paying a deposit (called a *parakatabolē* and equivalent to one-tenth the value of the estate), makes known that he intends to

children are not installed by themselves but by the men who adopt them.

[**35**] But in fact, Leostratus [II] had but one thought in mind: by fair means or foul, he must lay claim to the property of others. At first, he was inclined to go and register his name on the Assembly list of the Otrynians—although he was an Eleusinian,[66] and he carried off the stunt; then, before he had himself registered on the official list of Otrynian citizens as well,[67] he was inclined to have a share in their public benefits, deliberately transgressing the law in this way due to his love for gain.[68] [**36**] But we caught wind of the scheme and with witnesses in tow prevented it from happening; our position was that the heir to the estate should be decided by your court before anyone was adopted under the name of Archiades. Although he was thwarted and convicted of wrongdoing before many witnesses both in the matter of the Assembly list and during the meeting for the election of deme magistrates, he nevertheless aspired to force the limits and by his intrigues to put himself above your laws. [**37**] The proof? He gathered a few Otrynians together with the Demarch and persuaded them to write in his name when the register would next be

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make a counterclaim to the estate (the deposit is mentioned again in 44.42 and 52). Regarding the deposit, see the Introduction to this volume, n. 46.

[66]Apparently each deme kept a list of its members who were qualified to take part in the Assembly. By trying to have his name inscribed on the Assembly list first (before being inscribed on the deme register), Leostratus has jumped the gun.

[67]An Athenian male was formally enrolled as a citizen in the deme of his father at the age of eighteen and underwent a "scrutiny" by demesmen regarding his age, parentage, and free status (see the Introduction to this volume at nn. 38–39). A man who was adopted to or by a father in a deme different from his own would have to be enrolled in the deme of the adoptive father, at whatever age he is at the time of the adoption. It should be remembered that Leostratus had earlier belonged to the deme Otryne; finding former fellow demesmen to aid him may not have been difficult.

[68]The "public privileges" for demesmen mentioned here might refer to participation in sacrifices and distributions of meat during them and of money for attendance at festivals.

opened. Later, during the celebration of the Great Panathenaea,[69] he presented himself at the time of the distribution of the Theoric Fund,[70] and when the other demesmen were getting their share, he demanded that money be given to him too and that he be registered on the deme's list[71] under the name of Archiades! We solemnly protested,[72] and everyone cried out against the scandal—and he left without his name registered and without any money. [**38**] A man who, contrary to your decree, expected to get a handout for festival attendance before his name was registered among the Otrynians, when in fact he belongs to a different deme—don't you think this man would claim an estate contrary to your laws? Or, a man who, before a decision has been rendered by the court, arranges such unjust profits, how could this man have confidence in the justice of his own case? For the man who unjustly claimed Theoric Funds has clearly used the same tactics now to get the estate.[73]

[**39**] In fact, Leostratus even deceived the Archon when he deposited the court fee against us and put in a counterclaim that he was "demesman of Otryne," although he is a demesman among the Eleusinians.[74] Moreover, after failing again and again in all his intrigues, he suborned some of the demesmen during the last election and asked to be registered as "adopted son of Archiades." [**40**] When we opposed him and insisted that the demes-

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[69]The Panhellenic festival was the occasion of many competitions (athletic, musical, and one for "manly excellence"); it was celebrated every four years at the end of the first month of the year.

[70]The Theoric Fund was distributed to assist demesmen in attending the major festivals.

[71]For the deme's list of members (*grammateion*), see 44.35n.

[72]This "solemn protest" (*diamartyria*) differs from the "protestation" that forms the basis of the lawsuit; see Dem. 48.46n.

[73]The Athenians took such offences seriously. The speaker of Din. 1.56 informs us that the *boulē* reported a man to the Assembly who claimed the right to take "the five-drachma portion" in the name of an absentee; the money was apparently a distribution from the Theoric Fund; the man was tried in a *dikastērion* and acquitted. Cf. Hyp. *Dem*. col. 26.

[74]See the Introduction to this volume at n. 46.

men should give their vote only after the court's award of the estate and not before, the demesmen were persuaded not by whim but out of respect for the laws: for it was a scandalous notion, they thought, that a man who had put down a deposit for a hearing over an estate should install himself as adopted son while the question was still undecided.

But what Leostratus [II] here next arranged was the most scandalous stunt of all: [**41**] for when he failed to have his own name registered, he had his own son, Leochares, installed as the adopted son of Archiades in defiance of all the laws—before the scrutiny by the deme had taken place;[75] Leochares had not yet been introduced to the phratry of Archiades[76]—it was only after his name had been registered on the deme list that, with the connivance of one of the *phateres*, Leostratus [II] engineered his son's registration on the phratry list.[77] [**42**] And after this, in the protestation before the Archon, he entered Leochares' name as the legitimate son of a man who has been dead for many years—although the young man's name had been registered in the phratry list only two days before! The upshot is that both these men are claiming the inheritance! For this Leostratus [II] here put down a deposit for the hearing on the estate as the legitimate son of Archiades, and this Leochares here has issued a protestation that he is the legitimate son of the same father[78]—[**43**] and neither the

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[75] If Leostratus were attempting to adopt Leochares posthumously to Archiades, then enrollment in phratry and deme (if an adult) is required; see the Introduction to this volume, II.3.

[76] *Phrateres* are members of a phratry; see the Introduction to this volume at nn. 33–37. A natural son of a citizen was admitted to a phratry before he was admitted to a deme; we may presume the same was usual in the case of a boy (or man) who was adopted by a father who belonged to a different phratry. See Is. 7.15–17.

[77] There might be any number of hypothetical scenarios to explain these irregularities, e.g., deme registration may have appeared on the calendar before phratry registration.

[78] The speaker pretends here (and again at 44.52) that two procedures for claiming an inheritance are going on at the same time: (1) the adjudication hearing in which Leostratus [II] and Aristodemus had filed coun-

one nor the other adopts himself to a living man but to a dead one! In our opinion, judges, it's only after you have given a verdict in this trial that the time is right to adopt a son to the deceased—from us who are closest by inheritance circle—so that the house may not be deserted.

[44] First, then, judges, to prove that this Leostratus [II] here left Otryne and returned to the Eleusinians with a legitimate son left behind in the house of Archiades, and that his father had done this same thing before him, and that Leocrates [II], the son who was left behind by Leostratus [II], died without offspring, and that Leochares, who has now issued the protestation, was registered first with the demesmen and only then with the *phrateres*—to prove all these points, the secretary will read to you the depositions of *phrateres* and demesmen, and I shall provide depositions one by one to prove all the other feats of these men that I've mentioned so far. [*To the secretary*] Call the witnesses here, please.

[WITNESSES]

[45] Well then, judges, you have now heard all the facts, both what happened at the outset regarding the estate and what took place later, from the moment we filed the claim. It remains to speak about the protestation itself[79] and about the laws in accordance with which we claim the right to inherit; after that—if time permits, and if we won't annoy you—we shall prove that the arguments that our opponents will make are neither just nor sound. First of all, let the secretary read the text of the protestation. Pay close attention to it, for it's about this that you will soon cast your votes.

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terclaims to the estate and (2) Aristodemus' suit for false witnessing against Leochares' protestation in which he claimed he was the direct heir (as posthumously adopted son of Archiades). In fact, the protestation has halted the adjudication and probably Leostratus had withdrawn his claim (see the Speech Introduction, n. 15). Regarding Leostratus' deposit for the hearing, see 44.34n.

[79]The "protestation" (*diamartyria*) is, of course, at the heart of the case before the court.

[PROTESTATION]

[46] Without a doubt, then, the defendant, as you have heard, asserted in the protestation, "the estate of Archiades is not adjudicable because he has legitimate children [*gnēsioi*] validly according to the ordinance."[80] Let's examine, then, whether this is true or whether he has testified falsely. For the Archiades whose estate is at issue adopted as a son[81] the grandfather [Leocrates I] of the man who has now issued the protestation [Leochares]; the grandfather left behind a legitimate son, Leostratus [II], the father of the defendant, and returned to the Eleusinians. [47] Next, Leostratus [II] himself in turn left behind a son [Leocrates (II)] and went away, returning to the house of his fathers. The son who was left behind by him, the last of all the adopted sons, has died without issue. Accordingly, the house is now extinct, and the inheritance has reverted once again to those who were closest of kin from the very beginning.[82] [48] How, then, according to the text of the protestation, could Archiades still have any sons, when everyone agrees that the sons who were adopted to him returned and the son who was left in the house last of all has died childless? The conclusion is inevitable: the house is extinct. And when the house is extinct, there cannot be legitimate sons of Archiades still alive. The defendant, therefore, has testified that nonexistent persons exist, and he has written in the protestation that "Archiades has children," pretending that he himself is one of them. [49] But surely when he says "legitimate children" and adds, "validly according to the ordinance," he is misleading you in defiance

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[80] The term for "ordinance" (*thesmos*) is archaic and here refers to the law of Solon.

[81] Here the speaker says that Archiades himself adopted Leocrates I—i.e., the adoption may have been *inter vivos* or by testament; cf. 44.19. If he was adopted *inter vivos*, he had the right to enter the estate without having to submit to an adjudication: he was a "legitimate son." If he was adopted by testament, he was required to make a claim to the estate and be awarded it. Harrison 1968: 91 suggests that Leocrates [I] was adopted by testament and that he may have improperly entered the estate, without an adjudication.

[82] See 44.2n and 15n.

of the laws. For "legitimate" [*gnēsion*] means when a child is born of one's body,[83] and the law attests this usage when it says "legitimate children are born from a woman whom a father or brother or grandfather has pledged in marriage."[84] And as for "validly" [*kyriōs*], the lawgiver used this word in reference to adoptions, understanding that whenever a man who is childless and has control of his own property adopts a son, this ought to be "valid."[85] Well then, the defendant both claims that no natural son was born to Archiades and also asserts in the protestation that "he has legitimate sons"—having thereby given testimony contrary to the facts of the case.

[50] Although he admits he is an adopted son, he was manifestly not adopted by the deceased himself—[*to Leochares*] so how can this arrangement of yours be valid "according to the ordinance"? "Because, by Zeus," he'll say, "I was registered as Archiades' son." Yes, by these men here who forced the registration just yesterday, when the hearing for the adjudication of the estate was pending. Really now, it's not right to invoke a crime as infallible proof. **[51]** In fact, it's a terrible paradox, judges, that in his statement before you very soon, he will claim to be an adopted

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[83]The speaker alters the more usual opposition of "legitimate children" vs. "bastard children" to "legitimate children" (= "begotten children" or "children born of one's body") vs. "adopted children"; cf. 44.5n and see Wyse 1904: 343. Adopted children in Athens are legitimate, provided they were born "legitimately," i.e., born of two Athenian citizens.

[84]The law is cited at Dem. 46.18; for the meaning of "pledging" a woman in marriage, see the Introduction to this volume at nn. 17–20. The law is being twisted here, as if it demonstrated that only children born of a betrothed woman were legitimate, with emphasis on the word "born." But the law puts equal emphasis on the execution of "pledging" and the identification of the kinsmen who so execute it. Children who are adopted are also born from parents who are pledged.

[85]The speaker has arbitrarily associated the word "validly" with the Solonian law cited and paraphrased in Dem. 46.14–15 (see 46.14n); he has disassociated the word from its context in his quotation from the protestation (44.46).

son, while in the protestation he didn't dare to write that down:[86] the statements in the protestation suggested he was a natural son whereas the words that will be spoken soon will suggest he is adopted! But if they make a defense that contradicts the terms of the protestation, doesn't it follow that one or the other is false? Of course one can understand why they didn't add the word "adoption" to the protestation. For in that case they would have had to add the words "adopted by so and so." But Archiades did not adopt them; no, they adopted themselves to deprive us of our inheritance!

[52] Now isn't it absurd and unacceptable that no sooner had this Leostratus here put down his deposit for the hearing before the Archon as "Leostratus, son of Archiades"—a demesman from Eleusis the son of a demesman of Otryne!—than the other produced the testimony to protest our claim—as you yourselves see—saying that he, too, was the "son of Archiades"?[87] To whom, I ask, are you to give credence? [53] In itself, this is an excellent proof that the protestation is a sham, namely, that different persons are making claims about the same matter. Explanation is easy: I think that when Leostratus [II] here made the deposit for the hearing to counter our claim to the estate, the man who issued the protestation had not yet been enrolled as a demesman. We would then be victims of a grave injustice if you put your trust in the words of the protestation that materialized after the fact.

[54] Even worse, Leochares has testified in the protestation to facts that are older than he is. For if Leochares was not yet a member of Archiades' house when this application for the hearing over the estate was made, how could he possibly know anything of these matters? Of course, if he had limited his testimony to himself, then his strategy would be explicable: he would have

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[86]The protestation may have contained only the formulaic statement that "the estate is not adjudicable because there is a legitimate son"; nothing else was called for; the speaker is all hot air.

[87]The speaker is once again pretending that the two procedures (the adjudication hearing and the protestation) occurred simultaneously; see 44.42n.

composed a document without any just foundation, but it would nonetheless have concerned himself in his own lifetime. But as it stands now, he has written "Archiades has legitimate sons," namely, his own father and the son involved in the first adoption [Leocrates I]—without accounting for the return of these sons to their families. Therefore, he has had to testify to events older than he is and that did not take place in his own lifetime. Are you then to believe in the veracity of a man who has been impudent enough to do this?

[55] "Ah, by Zeus!—perhaps he has produced the testimony because he has heard the facts from his father!" Well, the law does allow us to testify to the hearsay evidence of the dead but not to that of a living father concerning that father's own deeds![88] And another point: why in the world didn't Leostratus [II] here use his own name in the protestation instead of Leochares'? For the older man should have presented the testimony about the older deeds. "Because, by Zeus!" he might say, "I have given him as an adopted son to Archiades." [56] [*To Leostratus*] Well then, it was also incumbent upon you, as the installer of adopted sons and contriver of these events, to have rendered an account and made yourself accountable for your actions; really, it was your duty. But you avoided this and affixed to the testimony the name of this man who knows nothing. Accordingly, it is plain, judges, that the assertions made in the document are false and are acknowledged to be so by these same men. And believe me, it will be perfectly just if you refuse to listen to Leostratus [II] when, a short time from now, he begins to speak on matters that he lacked the boldness to attest in the protestation.

[57] Furthermore, one can comprehend especially well from the following observations that protestations are the most unjust of procedures and that those who resort to them are deserving of your greatest anger.[89] First, protestations are not obligatory as

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[88] The law on hearsay evidence is cited at Dem. 46.8.

[89] The interesting passage that follows (44.56–59) presents a hostile view toward the procedure of "protestation" (*diamartyria*); cf. Is. 7.3. Gernet 1957: 147 n. 3 suggests that it may have been added by the logographer af-

other procedures are but instead arise from the deliberate willfulness of the individuals who put them to use. If, in a disputed case, there's no other way to see justice done than by issuing a protestation, then perhaps to proceed this way is necessary. [**58**] But if it is also possible to present the case before any of the tribunals without recourse to a protestation, how then is issuing a protestation anything but a sign of recklessness and the greatest desperation? For the lawgiver certainly didn't make the procedure compulsory for disputing parties but granted it to them in case they chose to use it—as if he were testing the character of each of us, to see how we might react if reckless conduct were an option. [**59**] Moreover, if it were left to those who produce protestations, there would be neither courts nor trials. For this type of procedure thwarts all legal actions and on each occasion bars entry into the courts—at least insofar as entry depends on the arbitrary discretion of those who issue the protestation. In my view, you ought therefore to regard such individuals as public menaces and never pardon them when they are on trial; for each of them, having chosen for himself the risk attached to the procedure, enters the courtroom of his own free will.[90]

[**60**] Well then, that the protestation is a sham, I daresay you have learned accurately from both written and oral statements. But I want to demonstrate to you, judges, in a few words that the laws, too, grant the inheritance to us, not because you haven't already learned this from the arguments presented at the outset but so that you may more easily keep in mind what's fair and just when faced with the lies of these men. [**61**] In short, then: since we are the closest relatives on the male side to Archiades

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ter the speech was written—44.60 follows more directly after 44.56 than after 44.59.

[90]The risks were considerable. A deposit (one-tenth the value of the estate) was required for disputes over estates that proceeded via a *diamartyria* and a *dikē pseudomartyriōn* (Is. 6.12); see the Introduction to this volume at n. 46. Moreover, the losing litigant in the trial for false witnessing, if he did not get at least a fifth of the votes, was liable to the *epobelia*, a fine consisting of one-sixth the amount at stake in the trial (Isoc. 18.11–12; Whitehead 2002: 87 and n. 2).

whose estate is at issue here, and since from the series of adoptions that were provided for him, some of the adoptees returned to the house of their fathers and the one who was left behind has died without issue, given these facts, we claim to be the heirs. [**62**] We are not defrauding Leostratus of any property, for these men have their own properties—and since the estate left behind by Archiades is ours by law. For the law, judges, provides that the males and those born from the male side of the family should prevail, and that's who we are. Moreover, Archiades had no children, and we are <the kinsmen>[91] who have the right to succeed. [**63**] Furthermore, it surely isn't right for an adopted son to introduce other adopted sons into a family, but it is right to leave behind sons born to him and when this fails, to restore succession to qualified kinsmen.[92] Indeed, the laws make these provisions.

For isn't it clear that each one of you is cut off from the right to succeed by kin circle if this license to adopt is granted to adopted sons?[93] For you see that most people adopt sons when they are seduced by flattery and often when they are involved in quarrels with kinsmen.[94] But if the adopted son is permitted to adopt whomever he pleases contrary to the law, inheritances will never be passed on to kinsmen. [**64**] The lawgiver, too, having foreseen that consequence, forbade a man who was himself adopted to adopt a son for himself. How did he articulate these matters? When he said, "A man is [allowed] to return to his own family upon leaving behind a legitimate son,"[95] he clearly means, I think, that it is not right for him to adopt. For it is impossible for

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[91] There appears to be a lacuna in the text; I have used Dindorf's supplement "the kinsmen." For the degree of relationship, see 44.13n.

[92] This is the fifth and last time the plaintiff's position is outlined for the judges; see 44.15n.

[93] Cf. Is. 3.60–61.

[94] The capriciousness of a testator or his being held hostage (metaphorically or actually) by kinsmen is somewhat safeguarded by the Solonian law on wills (see Dem. 46.14n).

[95] See 44.22n and the Speech Introduction, n. 18, regarding the speaker's interpretation of "legitimate son."

a man to leave behind a legitimate son [*gnēsion*], unless a natural son has been born to him. Well then, Leostratus, you claim it right, with your eye on the estate, to introduce an adopted son to the deceased, who was himself adopted into our family [*genos*], as if you were entering into possession of your own property and not that which was to be given to the proper kinsman in accordance with the law.

[**65**] For ourselves, judges, if the deceased had adopted anyone, even though the law does not allow this, we would have yielded to him,[96] or if he had left behind a will,[97] we also would have abided by this, for we are of the same mind as we were at the beginning, offering no opposition to the men who were in possession of the property and who were returning later [to their family], in whatever way they liked. [**66**] But now that their manipulative strategy has been laid bare both by these men themselves and by the laws, we think that we should inherit Archiades' estate and that we, who have not been adopted before, should provide the son who is to be adopted and not they. For justly, I think, the lawgiver acted, both when he required those nearest of kin to handle the misfortunes of family members and to give away women in marriage[98] and when he granted to the same kinsmen the right to inherit and enjoy the wealth.[99] [**67**] But the most important point in all these matters is also best known to you: for the law of Solon doesn't even allow the adopted son to dispose by will of the property of the family into which he is adopted—with good reason, I think; for a person who enters by lawful adoption into possession of the property of another is not to treat it as if it were his own private possession; no, he is to follow the laws down to the letter in every detail just as the law bids. [**68**] And it says, "All those who had not been adopted when Solon entered on his archonship, are permit-

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[96]See 44.25n.

[97]He refers to a will prescribing an adoption ("testamentary adoption"). If Leocrates [II] had adopted his brother Leochares by will, the latter was required to make a claim to the estate before entering it.

[98]The law to which he alludes is cited in Dem. 43.54.

[99]Cf. Dem. 43.62.

ted to dispose [of their property by will] however they wish";[100] thus, it is not permissible for those who were adopted to dispose of property, but if, while alive, they leave behind a legitimate son, they can return, and if they die, they should give the inheritance back to those who were kinsmen of the adoptive father from the very beginning.

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[100]This seems to be a loose and abbreviated paraphrase of the law that is inserted into the text at Dem. 46.14; see 46.14n. Aristodemus has omitted the difficult clause in 46.14: "Everyone who had not been adopted when Solon entered on his archonship *in such a way that he could neither renounce nor claim the inheritance* . . ." Possible reasons for the omission are (1) he is sloppy, (2) the clause was no longer applicable in his day, (3) the clause is a fraudulent addition to the law, or (4) the clause undermines his position about adoption.

45. AGAINST STEPHANUS I

INTRODUCTION

Speeches 45, 46, and 49 in this volume (as well as 50, 52, 53, and 59 in the next) belong to lawsuits initiated or at least pleaded (Dem. 59) by Apollodorus of Acharnae. Speeches 45 and 46 belong to the same trial, the first and second speeches in a suit for false witnessing: Apollodorus is suing his wife's kinsman Stephanus (45.54). The latter had confirmed the alleged false testimony in the course of an earlier *paragraphē* trial (a "special plea to bar action") that Phormion had brought against Apollodorus;[1] Phormion was trying to bar Apollodorus from suing him for the recovery of money allegedly embezzled from his father's bank. The *paragraphē* trial probably took place in 350/49 BC;[2] Demosthenes had written its opening speech, Oration 36, in support of Phor-

[1] *Paragraphē*, sometimes translated as a "counterindictment," is here called a "special plea to bar action" so as not to confuse it with "countersuits" in discussions of Speeches 39, 40, 41, and 47. It was a procedure by which a person accused of an offense could, during the preliminary hearing (*anakrisis*) or during the official arbitration, raise an objection to the lawful admissibility of the case to a court trial. Once such an objection was made, the original lawsuit was suspended until the "special plea" could be heard before a panel of judges who would decide whether it should go to trial. See below, nn. 5, 6, and 9.

[2] Datable references appear frequently in Oration 36 and point to the trial date noted above; for details, see Sandys 1896: xxvii–xxix and Trevett 1992: 48 n. 28.

mion.[3] The speech apparently was so successful that the panel of judges refused to listen to Apollodorus' response (45.6). Before the judges voted, however, Apollodorus wisely calculated the outcome and made a formal objection against the witnesses, the first step for bringing a charge of false witnessing.[4] As foreseen, he lost the *paragraphē* trial overwhelmingly and was fined a huge sum (over three talents) for lodging a frivolous lawsuit (45.6).[5]

During the *paragraphē* trial, Stephanus had testified (1) that Phormion, in the presence of the official arbitrator,[6] challenged Apollodorus: if he denied that a document furnished by Phormion was a copy of his father's will, then he should open the sealed

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[3]See "The Authorship of Demosthenes 45" at the end of the Introduction.

[4]*Ath. Pol.* 68.4: "When the jurors are ready to vote, the herald first makes a proclamation, to ask whether the litigants object (*episkēptesthai*) to the testimonies; objections are not allowed once the voting has begun" (trans. Rhodes). If a litigant makes an objection at this time, the jurors proceed to vote; naturally, such an objection might influence their vote. The same procedure appears to have been in place in Demosthenes' time; see 29.7 and 48.44–45. The objection made by the litigant shows his intention to sue the witnesses after the current trial is over. One practical consequence is that the documents used in the hearing (e.g., depositions, challenges) will be preserved for the false-witnessing trial.

[5]The statutory penalty (called an *epobelia*) for the losing party in a special plea (*paragraphē*) was one-sixth (one obol per drachma) the amount of the claim (Isoc. 18.2–3). Since Apollodorus had sought twenty talents from Phormion, his penalty was over three talents—a hefty sum. There is no evidence that the loser in the special plea was liable to the penalty only if he received less than one-fifth of the votes. If we trust Apollodorus' account of his own loss, however, it must have been a unanimous vote in favor of Phormion.

[6]Apollodorus' original suit against Phormion to recover money went first to an official arbitrator (see the Introduction to Dem. 39 at nn. 12–13, for the official arbitrator). During the arbitration, Phormion had raised objections to Apollodorus' suit that caused it to be put on hold until the *paragraphē* trial could determine the validity of Phormion's objections; the arbitration therefore changed course midstream and became the preliminary hearing for the *paragraphē*.

will that had been put into the custody of a third party and had been furnished for the arbitrator; (2) that Apollodorus refused to open it; (3) that a document (furnished by Phormion) to which he (Stephanus) was bearing witness was a copy of the will of Apollodorus' father; and (4) that the latter document was put into evidence at the same time as was his written testimony (45.8 and 10).[7] In Speeches 45 and 46, Apollodorus maintains that Stephanus' testimony about the challenge is false and further maintains that the document furnished by Phormion was not a copy of his father's will. Presumably, the trial for false witnessing took place shortly after the *paragraphē* trial. Apollodorus seeks one talent as compensation (45.46).

Summary of the Speech

Apollodorus begins his speech with an account of his long-standing dispute with Phormion (with due attention to his original lawsuit against Phormion and the *paragraphē* hearing that had barred that lawsuit from entering the court, 45.1–7). He then turns to Stephanus' testimony (45.8–10) and argues that the challenge had never been executed (45.9–26: had the challenge materialized, there would have been no reason for refusing to open the will; moreover, the challenge was unnecessary since the will deposited with the third party could have been put into evidence; finally, Pasion had made no will). He next argues (45.27–36 and 40–42) that the terms of the "will" prove it was forged by Phormion in his interests and that the "will" was inconsistent with the "lease" (also a "forged document"). Apollodorus then anticipates the arguments of Stephanus (45.43–52) that his testimony was limited to two points only, whether Phormion had issued the challenge and whether he had accepted it.[8] Apollodorus seeks to persuade the judges that even though Stephanus' testi-

[7] Arguments regarding the authenticity of Stephanus' deposition are presented at 45.8n.

[8] Stephanus apparently disclaims accountability for the authenticity of the will.

mony did not pertain to the main issues of the *paragraphē* trial and had not been instrumental in Phormion's victory, but instead pertained to the main issue of the lawsuit that had been barred by the *paragraphē* hearing,[9] nevertheless, if Stephanus' testimony was false, he should be penalized.

At this point in the speech, the legal issues have all been examined, and Apollodorus now turns to personal attacks on his opponents, beginning with Stephanus (45.53–70: a kinsman should not break the ties of nature by giving adverse and false testimony; he had pilfered an important document during the official arbitration; he is a cheapskate). Next he attacks Phormion (45.71–82), perhaps to retaliate for the heavy-handed way he himself had been attacked in Oration 36. Then Apollodorus attacks his own brother Pasicles, scurrilously insinuating that he was born illegitimately (45.83–84). He ends with an address to the judges (45.85–88).

At first glance, Speeches 45 and 46 may not seem of immense interest: there is a great deal of argument about a seemingly fake challenge, an allegedly fake will, and, thrust into their midst as *comparandum*, a fake lease. Yet Oration 45 contains some of the boldest argumentation in the Demosthenic corpus; poses a tantalizing question of authorship; offers an array of courtroom documents, including a uniquely attested sample of a "Plaintiff's Charge" and "Defendant's Plea" (45.46); sheds light on the way Athenian litigants furnished witness testimonies ahead of trial;[10] and adumbrates strategies for winning back one's losses by initiating trials for false witnessing. Oration 46, less keenly argued and

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[9]Phormion's advocate in the *paragraphē* trial (Dem. 36) had argued that Apollodorus' lawsuit was inadmissible both because he had been given a release from all claims (36.23–25) and because the statute of limitations was long past (36.26). Stephanus' testimony did not overtly pertain to those issues but rather to the main issues of Apollodorus' original lawsuit to recover money from Phormion. Less overtly, Stephanus' testimony *was* relevant to the main issues of the *paragraphē* trial; see below, n. 29.

[10]On the preparation of written evidence in advance of trial, see 45.44n and, more extensively, 46.11n. On the oath to deny evidence (*exomosia*) presented at trial, see 45.58n.

surely drafted by a different writer, nevertheless provides us with numerous laws (in fact, ten, unless some are provisions belonging to the same piece of legislation), both paraphrased and inserted into the text as if authentic, many having to do with witness testimony but some rather strangely adduced to shape (or distort) the speaker's argument (e.g., the laws on adoption and bribery). The authenticity of these laws and the use the speaker makes of them will be addressed in the Introduction and notes to Oration 46. Here the reader will find information about Apollodorus' family and Phormion; an account of the dispute (the false-witnessing trial represented by Dem. 45 and 46 is inextricably bound up with the *paragraphē* trial represented by Dem. 36); an explication of Stephanus' testimony, with attention focused on the challenge; and a brief discussion of the debated authorship of the oration.

Apollodorus' Family and Phormion

Apollodorus was the older son of a famous and wealthy banker in Athens named Pasion.[11] While the latter's origins are unknown, he was certainly not born to the position he subsequently attained: he appears in our sources at first as a slave to the Athenian bankers Antisthenes and Archestratus (Isoc. 17.43; Dem. 36.43); he was granted freedom for his personal and professional merits before 394 BC and so attained the status of a metic or "foreign resident" (Dem. 36.48).[12] Later, Pasion became the owner of a lucrative shield factory as well as a bank in Piraeus that he had previously managed (Isoc. 17.4 and 50). He was extraordinarily successful, amassing perhaps seventy talents by the time of his death in 370/69.[13] He donated generously to public institutions

[11]Detailed information on the life of Pasion and members of his family can easily be found in Trevett 1992: 1–49 and *APF* 11672.

[12]According to Davies 1971: 428, "well before 394." The latter is the generally accepted date of Isoc. 17 in which oration, among other allusions to Pasion's metic status, he is mentioned (17.41) as being inscribed among the *xenoi eispherontes* ("foreigners subject to paying special taxes").

[13]For this conservative estimate of Pasion's wealth, see Trevett 1992: 4 and 27–31, n. 14. For the date of Pasion's death, see 36.13.

in Athens and in return was granted citizenship at an unknown date between 394 and 376[14] (probably in the 380s) and so became Pasion of the deme Acharnae (only citizens could become members of demes).

Pasion's son Apollodorus was born ca. 394 (he was twenty-four years old when his father died: 36.22), and his brother Pasicles was born ca. 380;[15] presumably both were granted citizenship by the same decree by which it had been conferred upon their father.[16] Whether Pasion's wife Archippe would likewise have been granted citizenship is a matter of debate.[17] In his will (considered inauthentic by Apollodorus), Pasion gave Archippe to his bank manager Phormion in marriage along with a dowry of two talents, an apartment building worth a thousand drachmas, her maids, jewelry, and household belongings (45.28). Apollodorus says at 45.3 that the marriage took place while he was absent from Athens on trierarchic service, probably in 368/7.[18]

Aside from being married to Archippe, Phormion resembled Pasion in other ways as well: foreign born (possibly non-Greek: 45.30, 73, 81)[19] and a slave in Athens, a banking cashier and eventually, by the late 370s, the manager for his owner Pasion (Dem.

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[14]Trevett 1992: 21–24 n. 9.

[15]Trevett 1992: 6 with n. 18, 38 n. 21: Pasicles' birth date can be calculated from the data: (1) Phormion was the lessee of the bank for eight years until Pasicles came of age (Dem. 36.10 and 37); (2) the lease was made by Pasion (45.31) and therefore antedates his death in 370/69; and (3) Pasion is still in charge of the bank in December 373/2 (Dem. 49.22) and seemingly so in 372/1 (49.29). Accordingly, the lease can have started between 372 and 370; its termination eight years later provides a date of 364 or 362 for the coming of age of Pasicles and so a birthdate of 380 or 378. Circumstantial data from Oration 49 suggest that the date of Pasicles' birth was 380.

[16]Citizenship decrees regularly grant citizenship to the descendants of the first grantee; see, e.g., Rhodes and Osborne 2003: nos. 4 (401/0) and 77 (338/7) and 45.78n.

[17]For discussion of the status of Archippe, see Bonner 1919; Whitehead 1986b; Carey 1991; and 45.28n.

[18]For the date of Apollodorus' trierarchy, see Trevett 1992: 33 n. 17.

[19]The allegations that Phormion was *barbaros* ("non-Greek") might be true or might be invective.

49.17), he was freed for his merits (Dem. 36.43–48) and so became a metic; he was granted citizenship in 361/0 (Dem. 46.13). Shortly before Pasion's death, Phormion leased from him both the bank and the shield factory; after his death and by direction of his will (as depicted by the speaker of Dem. 36), Phormion together with a man named Nicocles became guardian to Pasicles (Dem. 36.8 and 45.37). The estate was to remain undivided until Pasicles reached majority, but the guardians divided it sooner to prevent Apollodorus from squandering it, apparently in 367 (Dem. 36.8).[20] Phormion thereafter retained the lease of the bank and shield factory until Pasicles came of age (ca. 362). Details of Apollodorus' quarrels with Phormion can be found in Oration 36.

Procedural strategies: Paragraphē, *challenges, and witness depositions*

During the years between Pasion's death (370/69) and the suit Apollodorus brought against Phormion (350/49), Apollodorus busied himself with collecting debts owed to his father (36.20–21, 36, 41). In the suit against Phormion, he had aimed to recover money allegedly embezzled from the bank's capital reserve during Phormion's leasing of the business (ca. 371?–362); the sum sought was twenty talents.[21] As Apollodorus' case was being prepared for trial before the official arbitrator, the objection was raised that it was unlawful to bring the case into court on the grounds that the statute of limitations had expired (twelve years had elapsed since the end of the lease) and a release had been given for all charges

[20] The property would have been divided when Apollodorus returned to Athens after completing his service as trierarch (368/7?). Apollodorus, however, omits overt mention of this division in Dem. 45 and 46 (see 45.5n) and speaks instead of charges brought against Phormion, the closing of the courts that kept him from pursuing those charges, and a reconciliation with Archippe and Phormion (45.3–4). On these different accounts, see Trevett 1992: 10–11.

[21] Dem. 36.3. For different hypotheses regarding the sum claimed in the suit (twenty talents) and the eleven talents mentioned in the lease, see Trevett 1992: 43–46.

having to do with the bank.[22] The suit was then suspended until a hearing regarding its legitimacy (the *paragraphē* trial) could take place; that hearing ended in the resounding defeat mentioned at the outset of this essay: Apollodorus was fined and would not be able to sue Phormion again to claim the twenty talents.

Undaunted and ever resourceful, Apollodorus attempted to recover his losses by suing Phormion's witnesses; Stephanus was to be the first in a series to undergo trial (45.7 and 41). If successful in this case, he might then sue other witnesses; if successful with them, he might later go after Phormion with a lawsuit for contriving evidence; if he could not manage, case by case, eventually to recover twenty talents, he might at least win back the three-plus talents he had been fined for losing the *paragraphē* or come to a "private agreement" with Phormion.

In the case presented against Apollodorus in the *paragraphē* trial (Dem. 36), the citation of documents had played an important role; among those called to be read to the court there, three were accompanied by challenges, and two of these are called for again by Apollodorus in the false-witnessing trial (Dem. 45):[23]

1. The "terms of agreement" (i.e., the lease) according to which Pasion had leased the bank and shield factory to Phormion, a challenge, and depositions (36.4): presumably, the challenge was issued to compel Apollodorus to identify the lease. The

[22]The laws stating that suits cannot be brought in cases for which a release or quittance have been granted and where the statute of limitations has expired are paraphrased and cited (but not preserved) at Dem. 36.24–27. Although a private arbitration had taken place from which the release and quittance materialized, it is not the arbitration that is the grounds for barring the lawsuit, but the release and quittance. *Pace* MacDowell 2004: 12, who claims that private arbitrations are grounds for barring suits by *paragraphē*; there is no evidence for that.

[23]None of these documents are preserved in Dem. 36, but some (whether authentic or not) have been inserted into 45 (Nos. 1 and 2 in the list above). The list includes only depositions that accompanied documents; depositions of witnesses are presented at numerous other points in the speech: Dem. 36.10, 13, 21, 22, 35, 48, 55, 56 (three sets of depositions).

lease and challenge are put into evidence and paraphrased at 45.31–32.

2. Pasion's will, a challenge, and depositions from those who had kept the will in custody (Dem. 36.7): presumably, the challenge was issued to compel Apollodorus to identify the will as a copy of his father's will or else to open the original(?) that had been deposited with a third party. This is probably the challenge referred to in Stephanus' testimony at 45.8 and in the speaker's paraphrase of it at 45.10. A deposition of Cephisophon, whose father had left him in custody of (the original?) copy of Pasion's will, is read to the court at 45.19.

3. A "book" (*biblion*, probably notes recording moneys Apollodorus had received since his father's death as well as moneys owed him and moneys spent on public service), a challenge, and depositions: presumably, the challenge was issued to compel Apollodorus to make his own account books available for a copy to be made of pertinent information to be used at the trial (Dem. 36.40–41; cf. 49.43–44).

It should be noticed that on each occasion that Phormion had issued a challenge, its purpose was to acquire the identification of a private document or else to procure information from it (the lease: No. 1; the will: No. 2; and the accounting books, No. 3); this use of a challenge appears to have been a regular practice in Athens.[24] To judge from the detailed knowledge of Apollodorus' financial resources that the advocate of Speech 36 exhibits, we can surmise that Apollodorus had accepted the challenge to make his books available (as he certainly did on another occasion: 49.43–44). On the basis of his own arguments regarding the lease (45.32–35), however, Apollodorus may have refused the challenge to identify that document. Similarly, on the basis of his arguments regarding the challenge about the will (45.9–26), it is likely that he refused that one as well. What is significant is that he never says outright that he refused the latter two challenges. This, of course, is no surprise: to admit to refusing a challenge would (fairly or not), in

[24]Harrison 1972: 135–136, citing as examples Dem. 45.8, 48.48, 49.43.

the eyes of the judges, be tantamount to admitting that the documents sought were genuine and detrimental to his case.

The challenge about the will is the most important of the three for the false-witnessing case against Stephanus since this is the only one the latter had attested. What is interesting about Apollodorus' treatment of this challenge is that he appears to argue *not* that he refused the challenge but rather that *the challenge was not issued at all*; that is, the entire challenge was a fabrication. At any rate, this is the way most scholars have interpreted Apollodorus' argument of probability in §§9–14 (that had the challenge been issued, there would have been no reason for refusing to open the will) and vague statements made here and there in the course of the speech (45.11 and 25). If scholars are right in this interpretation, then this is one of the stupidest arguments in the entire Demosthenic corpus. The challenge, according to Apollodorus' opponents, had been issued during the official arbitration that preceded his lawsuit (the one that never came to trial) for the recovery of "embezzled money" from Phormion; that being the case, then in the trial for false testimony, Stephanus could easily have summoned the official arbitrator or bystanders to testify that he or they had been present when Phormion challenged Apollodorus.[25] Had the arbitrator or bystanders confirmed such testimony, Stephanus' acquittal would be certain to follow.

Apollodorus, however, never addresses the (hypothetical) testimony of the arbitrator or bystanders, and I think we must accordingly infer both that Stephanus had not requested such evidence for trial and also that Apollodorus did not argue that a challenge had not been issued. Apollodorus' language in the passages where translators and commentators have interpreted him as making that argument is vague (see 45.11 and 45.25 with notes).

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[25]Cf. Dem. 37.26, where "dispatchers" and the "board" (of overseers of the dockyards) who introduced adjudications into court at that time are called to testify that they had indeed introduced a particular case into court; also Dem. 59.40, where testimony from the Polemarch is called for and cited to confirm that Phrynion had demanded sureties for Neaera in his presence. For other officials called upon to give testimony, see Humphreys 1985: 326–327.

Explanation, however, is simple: Phormion had issued the challenge, but Apollodorus had refused it; consequently, the challenge had not been carried out. The noun and cognate verb meaning "challenge" in Greek are often used in ways that blur the distinction between the issuing of the challenge and the activity that is enjoined by the challenge once it has been accepted and set in motion. Accordingly, it is possible for Apollodorus to say "in fact the challenge did not materialize."[26]

The challenge itself had been devised so that accepting it involved either one or two steps. Step One involved identifying the document furnished by Phormion as a copy of Pasion's will. If Apollodorus, having first accepted the challenge, had then agreed to the document's authenticity, the challenge would have been carried out and the document would have been identified. Step Two would take place only if he had denied the document's authenticity instead of agreeing to it; in that case, he would be compelled to open the will kept by a third party. Clearly the presupposition of the challenge is that Phormion's document is an authentic copy of the genuine and original will preserved by the third party; to accept Phormion's challenge, to participate in "Step One" or in "Steps One and Two," was to accept Phormion's case, lock, stock, and barrel.[27] Clearly Apollodorus' legal strategy is to claim (whether truly or falsely) that the presupposition of the challenge is all wrong: both wills were fabrications. Naturally, he must refuse the challenge. A clever part of the challenge, however, is that both (1) refusing the challenge in toto and (2) accepting the challenge but denying the authenticity of Phormion's doc-

[26]Cf. Dem. 47.15.

[27]This is perhaps even more clear in Dem. 46.5, where once again the speaker revises the way the testimony should have been worded, viz., that Apollodorus had been challenged "to open the document which Amphias, the brother-in-law of Cephisophon furnished, but that Apollodorus refused to open it." The speaker then says, "If they had testified in this way, they would have appeared to testify truthfully." The terms of the (unrevised) challenge left Apollodorus no grounds to dispute the authenticity of the documents he was being asked to identify. Accordingly, he must reject the challenge.

ument and subsequently refusing to open the second document had the same consequence: one could say of the person who chose either "1" or "2" that "he had refused to open the will"—which the judges would surely find damning. Apollodorus, having gotten himself in the plight of "1" (i.e., he had refused the challenge), found himself in the same position as a person in the plight of "2" (i.e., one who had in fact refused to open the will).[28]

Stephanus' deposition, inserted at 45.8, then, is a clever document, not only for the reason pointed out just now—the way it tricks a person who refuses the challenge outright into the same position as one who accepts the challenge but refuses to open the will—but also for the way it was exploited in the earlier *paragraphē* trial. Stephanus had testified that "Apollodorus refused to open the will." Certainly that is the point that would mean most to the judges. Stephanus' deposition, however, might have been written up differently. He could have testified that Apollodorus *did not accept the challenge* (cf. 45.43). If, however, Stephanus had testified only to the refusal of the challenge in the *paragraphē* trial (Dem. 36), then Phormion's advocate could not have gotten mileage out of the refusal to open the will; there would have been no apparent reason to introduce the will into evidence; and consequently, the advocate would not have been able to argue one of the main issues of the lawsuit he was trying to bar from entering court.[29]

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[28]This particular challenge is not unique in working this way; litigants often speak of a person who has refused a challenge as having refused one of the terms of the challenge. Cf., e.g., the challenge at 45.61–62: Apollodorus, having challenged Stephanus to give up a slave for examination under torture, reports that Stephanus refused "to hand over the slave," not that "he refused the challenge." The uniqueness of the challenge in 45.8 and 10 is its treatment by the speaker: he brilliantly deconstructs an almost fail-safe challenge without ever admitting that he refused it.

[29]The advocate in the *paragraphē* trial had used both the evidence of the will and witnesses to it to demonstrate the legitimacy of the large dowry left to Apollodorus' mother and the instructions regarding her marriage to Phormion. Since Apollodorus had brought suit regarding his mother's estate soon after her death, and since his claims (so the advocate of Oration 36 had argued) were settled extrajudicially with a release to Phormion at

But Stephanus' deposition is equally, even more brilliantly, exploited in Speech 45. When Apollodorus turns from the challenge (cited in the testimony read to the court in 45.8), he focuses on the very clause of the allegedly false testimony that had been contrived to create the greatest opprobrium before the judges: *"I refused to open it."* Certainly that is the point that would mean most to the judges and hence the focus, in Apollodorus' speech, on the fraudulence of the wills. The same "false statement" about the will is subjected to complaint in 45.15: "Furthermore, anyone could tell they are lying—not only when they attest that *I refused to open the document* but also when they attest a challenge at the same time as they do a will." Apollodorus did not refuse to open the will, he refused the challenge. From his point of view, both wills were forgeries, and identifying the one with the other had no bearing on the question of authenticity; nevertheless, as pointed out earlier, he must avoid mentioning his refusal of the challenge. Hence, the strategy of his argument is to insinuate, by using vague language and confounding red-herring arguments of probability, that the challenge is an entire fabrication (whereas in fact it was "issued" but did not "materialize": purposeful obfuscation). The major punch of his argumentation aims at proving that the will put into evidence by Phormion was a forgery and that the terms of the challenge, which presupposed the authenticity of the documents in question, were all false.

The Authorship of Demosthenes 45

The arguments, then, are bold and subtle and not stupid at all. If the arguments are not also "good" (i.e., persuasive), it is because, as all commentators have agreed, Apollodorus has a very bad case. No one doubts the authorship of Speech 36: Demosthenes was its composer, even though he probably did not deliver it. Some scholars, however, have refused to believe that Demosthenes could have written both Speech 36 in support of Phormion

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that time, the will was not really unimportant to the main issues of the special plea.

(with its elegant praise of the former's character and scathing attack on Apollodorus) and shortly thereafter Speech 45 in support of Apollodorus (with its vitriolic attack on Phormion).[30] Some, having searched the ancient evidence for clues about the identity of the author, have found in Aeschines, Demosthenes' political rival, an important (silent) witness against the latter's authorship; while Aeschines knows that Demosthenes had written a speech for Phormion (Dem. 36) and that he had revealed the contents of that speech to Apollodorus, he does not accuse Demosthenes of actually *having written* the speeches for Apollodorus.[31] Aeschines' silence on the matter, however, might only mean that Apollodorus and Demosthenes had successfully concealed the latter's change of horse.[32] On the other hand, stylistic criteria and the vigorous argumentation of Speech 45 are entirely consistent with speeches that are more certainly ascribed to Demosthenes.[33]

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[30]E.g., Schaefer 1858: 178. Were professional speechwriters expected to be loyal to their clients? There is little evidence on the question. Aes. 2.165 and 3.173 (see the next note) depicts it as treachery for a speechwriter to reveal the arguments for his client to opponents, but that is not the same thing as accepting "B," the opponent of Client "A" in a past suit as a client in a subsequent suit against Client "A."

[31]Aes. 2.165 (and cf. 3.173) offers the anecdote as an example of Demosthenes' characteristic betrayal of trust: "You wrote a speech for Phormion the banker and got paid for it; you revealed this speech to Apollodorus who was bringing a capital charge against Phormion." Some scholars have dismissed the evidence as having no relevance to the *paragraphē* hearing (Dem. 36) since that was not a "capital charge"; but surely it is not beneath Aeschines to exaggerate the consequences of Demosthenes' perfidy as potentially life threatening to his betrayed client. Plutarch, on the other hand, writing in the second century AD, reports that Demosthenes wrote speeches both for Phormion against Apollodorus and for the latter against Phormion and Stephanus, behaving like "a sword-seller selling swords to both sides" (Plut. *Demosthenes* 15). The report, however, is unreliable: why should Plutarch, and not Aeschines, know this? Furthermore, Plutarch's report may be a misinterpretation or elaboration of Aes. 2.165 (thus Sandys 1896: xlii; similarly, Trevett 1992: 54–55).

[32]Thus Sandys 1896: xl; Gernet 1957: 154.

[33]See Trevett 1992: 63–73; earlier discussion in Blass 1893: 470–473.

Indeed, the general consensus now is that Demosthenes was the author of Speech 45.

Of various motives offered for Demosthenes' decision to write for both men, two are compelling. The first is simple: Demosthenes was corrupt and mercenary; offer him enough money, and he might do any number of things that might shock the morals of genteel nineteenth- and twentieth-century scholars.[34] The second involves conjecturing a political association between Demosthenes and Apollodorus: the latter was a member of the Council in 349/8, and at the beginning of 348 he had proposed a decree that the Assembly should vote whether to pay surplus revenue to the Theoric Fund (for religious festivals) or to the military fund (Dem. 59.3–5); the proposal accorded with Demosthenes' policy (e.g., 3.33) and therefore suggests that the two men had become political allies in the interval between Demosthenes' acceptance of Phormion's case against Apollodorus and his acceptance of Apollodorus' case against Phormion's witness. Whether political alliance preceded Demosthenes' acceptance of the latter case or whether his acceptance was predicated on Apollodorus' agreement to make the proposal cannot be known. In either event, his decision would have been politically motivated.[35]

Finally, a bit of speculation. Given the skill with which the challenge was formulated in Speech 36, it is reasonable to think that Demosthenes himself was its author rather than the hardly literate Phormion. The challenge, however, becomes an even greater document for exploitation in the false-witnessing trial, allowing Apollodorus to focus on the will rather than on his re-

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[34]See Trevett 1992: 60 n. 37. Davies (*APF* 3597: xxi) divides ancient references to offers made and accepted by Demosthenes into three categories: (1) "bribes accepted mainly as private blackmail or for the compounding of private suits"; (2) "bribes accepted for individual items of political business—laws, decrees, and proxenies"; and (3) "moneys offered and accepted with a view to influencing Demosthenes' course of action in the long term."

[35]Trevett 1992: 61 and 145–146 suggests the simpler political alliance; others argue that Demosthenes exacted the proposal as payment: Blass 1893: 33 and 471; Sandys 1896: xlviii–xlix; Gernet 1957: 154.

fusal of the challenge in toto. Might Demosthenes purposefully have formulated the challenge, while working up the case in support of Phormion, in such a way that it would also serve Apollodorus' needs? That is, had Demosthenes already agreed to write Apollodorus' speech against Phormion's witness while he was still preparing the *paragraphē* speech against Apollodorus?[36] Certainly the interval between the two trials cannot have been very long. Probably, most students of Demosthenes will not want to pursue this line of speculation, but for the venturesome, there may be cause for the worry.

45. AGAINST STEPHANUS I, CHARGED WITH FALSE TESTIMONY

[1] As the victim of false testimony and outrageous and terrible treatment at the hands of Phormion, I have come before you, men of Athens, to obtain justice from the guilty parties. I beg, pray, and entreat all of you first to hear me with good will (for really it is a great blessing for unfortunate men such as myself to have the opportunity to speak about their sufferings and to find in you a well-disposed audience!) and second, if I do seem to be the victim of wrongdoing, to aid my just cause. [2] I shall prove to you that Stephanus here has testified falsely and that he has done so out of a sordid love of gain and that he is his own accuser—so great is the transparency of his conduct. I shall try to tell you what has transpired between Phormion and me from the very beginning with as much brevity as I can; and after hearing all this, you will know both that Phormion is a scoundrel and that these men have testified falsely.[37]

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[36] If there is any truth to Aeschines' story that Demosthenes had shown Apollodorus his speech, then his purpose may have been to coerce him to bring the proposal regarding the Theoric Fund: a glance at the speech would have shown Apollodorus that he had no chance of winning the *paragraphē* (the statute of limitations had expired). Demosthenes, however, would come to his aid in a follow-up attack on one or more witnesses; see 45.23n.

[37] From the outset, the speaker directs his argument not only against Stephanus, the defendant in the present trial for false witnessing, but also

[3] I inherited from my father, oh judges, extensive property.[38] Phormion had this in his keeping and, additionally, while I was out of the country serving you in the public interest as trierarch,[39] he took my mother as his wife (but how he managed this is perhaps inappropriate for a son to tell in detail about his mother).[40] When, upon my return home I learned and saw how matters stood, [4] I was upset and could hardly bear it. And since I was unable to lodge a private suit (in fact, no such trials were taking place at the time, for you were postponing them because of the war),[41] I brought a public indictment for outrageous conduct (*hybris*) before the *Thesmothetai*.[42] Time passed, the prosecution was postponed,[43] there were no private suits, and chil-

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against Phormion, the defendant in the suit that Apollodorus had earlier initiated for recovering money allegedly owed him. Phormion had barred that suit with a "special plea to bar action" (*paragraphē*, see the Speech Introduction). Throughout this speech, Apollodorus presents the "proofs" that Stephanus lied in the special plea and also the issues he would have liked to have raised against Phormion in the lawsuit that did not take place (including an especially vicious attack on him at 45.71–86).

[38]For Pasion's wealth and the date of his death, see the Speech Introduction, nn. 11 and 13.

[39]The trierarchy probably belongs to the year 368/7 BC. See the Introduction, n. 18.

[40]Cf. 45.27, 39 and 84; in the last two passages, the limits are transgressed. Cf. 40.9 for the sentiment.

[41]The suspension of private lawsuits encountered by Apollodorus upon his return from serving his trierarchy in 368 is here ascribed to hostilities between Athens and Thebes. These occurred in the period between the battle of Leuctra in 371 and the battle of Mantineia in 362.

[42]The *Thesmothetai* were the six judicial officials, who, in addition to the Polemarch, King Archon, and (Eponymous) Archon, comprised the board of nine Archons, the most important yearly allotted officials in Athens. Among their tasks, the Thesmothetai assigned courts to magistrates and themselves presided over many public and private cases; see *Ath. Pol.* 59.

[43]A different version of this stage of the dispute is given at 36.14: Phormion claims that Apollodorus never brought a charge against him while Archippe was alive. Apollodorus here offers no reason for the apparent delay of the public indictment for outrageous conduct reaching trial.

dren were born to him by my mother. And after this (for the whole truth will be told you, judges), many affectionate appeals and prayers were advanced by my mother on behalf of Phormion, and many moderate and humble words came from Phormion himself.

[5] But, to cut the story short, men of Athens, since Phormion felt no obligation to carry out any of the terms to which he had agreed at that time[44] and since he had tried to defraud me of the money that he held as capital from the bank,[45] I was compelled to lodge a suit against him as soon as opportunity arose.[46] But when he realized that he would be convicted on all counts and that his conduct toward us would be shown to be the foulest there ever was, he plotted and contrived a scheme in support of which this Stephanus here testified falsely against me. At first Phormion entered a special plea [*paragraphē*] to bar the lawsuit on the grounds that "it was not admissible." Then he enlisted false witnesses to say that I had formally released him from my claims[47] and to at-

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[44]Apollodorus possibly alludes here to the agreement that concluded the division of Pasion's estate when Pasicles came of age and Phormion's lease of the bank and shield factory came to an end. At this time (364–362?), Apollodorus (according to Phormion's advocate in Dem. 36) granted Phormion a release from all liabilities under the lease (36.10–11 and 24). It seems, however, that Apollodorus later claimed Phormion had agreed to pay a large rent and had promised to go on paying it (36.33). According to Phormion's advocate, the claim was false: after Phormion's lease came to an end, the bank was leased to other men who paid the same rent as he had (36.12–13), and apparently these men confirmed testimony about their lease during the hearing of the special plea.

[45]See the Speech Introduction at n. 21.

[46]The *paragraphē* trial probably took place in 350/49 (see the Speech Introduction, n. 2). Apollodorus would have initiated his suit to recover money immediately before the *paragraphē*.

[47]The release (*aphesis*) from claims refers to an alleged settlement between Phormion and Apollodorus that Phormion maintains occurred after the division of the estate. Testimony to the release was given in 36.10 and possibly was repeated in Dem. 36.24. The term "release" is often used by lenders or landlords, who, on settlement of their claims outside of court,

test to a lease that was fabricated and to a will that never existed.[48] [6] He had a head start on me as first speaker since it was a special plea and not the hearing-in-chief,[49] and so by reading out the documents and by lying about other matters in whatever way he thought helped his case, he had such an effect on the judges that they refused to hear a single word from me. Condemned to pay the statutory penalty[50] without having been allowed to present my side of the case, but the target of more insolent abuse than perhaps any man alive has ever had to experience, I left the courtroom with a heavy heart, and indeed, it did not sit well with me.

[7] Reflecting over the matter, however, I see there was ample excuse for those who gave the verdict at that time (for I myself don't know whether I could have voted differently had I known nothing of the facts and listened only to the testimony); nevertheless, these men deserve our resentment since by giving false testimony, they were responsible for the outcome. I'll speak about the other men who have testified falsely when I proceed against them; but right now I'll try to instruct you about the lies this Stephanus here has told in his witness deposition.

[8] [*To the secretary*] Take this deposition and please read it so that I may base my proof on it. Go ahead and read it. And you there, stop the water.[51]

"release" the borrower or tenant from further liability. See further Isager in Isager and Hansen 1975: 228–237 and Scafuro 1997: 117–131.

[48]The lease for the bank and shield factory was set into evidence in Dem. 36.4, and the will, in 36.7. Neither of those documents are preserved in that speech, but documents with those designations are preserved below (45.31 and 28); their authenticity is in doubt (see notes ad loc.).

[49]"Hearing-in-chief" represents the Greek term *euthydikia* (lit., "a straight trial"); this would have been the trial on the original charge (either a *dikē aphormēs*, a lawsuit for the restitution of capital, or a *dikē blabēs*, a lawsuit for damages) had the suit not been barred by *paragraphē*. A feature of the latter procedure is that the defendant (Phormion or his advocate) in the "hearing-in-chief" becomes the first speaker in the special plea.

[50]See the Speech Introduction, n. 5.

[51]See Dem. 40.38n.

[DEPOSITION]

Stephanus, the son of Menecles of the deme Acharnae, Endius the son of Epigenes of the deme Lamptrae, Scythes son of Harmateus of the deme Cydathenaeon testify that they were present before the arbitrator Teisias of Acharnae when Phormion challenged Apollodorus: "If he denies that the document that Phormion put into the *echinos*[52] is a copy of Pasion's will, then he should open the will of Pasion, which Amphias the brother-in-law of Cephisophon furnished for the arbitrator." They further testify that Apollodorus refused to open it and that the document here is a copy of Pasion's will.[53]

[9] You heard the deposition, judges, and I think that you, even if you perceive nothing else yet, are at least surprised at this: that the beginning of the deposition is a challenge, whereas its conclusion is a "will."[54] Nonetheless, I don't think it right to ad-

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[52]An *echinos* is a pot with a lid used to preserve documents for trial; see Dem. 39.17n.

[53]The testimony was written up for the witness and handed over to an official arbitrator before the case came to court (see Dem. 46.11n for the method). In this case, the testimony had been put into evidence for use during the special plea. A copy of the challenge mentioned in this document was cited at Dem. 36.7 but is not preserved there; the challenge itself (i.e., a document designated "challenge" as opposed only to a set of documents designated "depositions") may have been limited to a statement such as the one set inside quotation marks here ("if he denies . . ."). Reasons have been adduced for denying authenticity of the "document" inserted here: (1) the names Teisias, Cephisophon, and Amphias are found in 45.10, 17, and 46.5 and could have been copied from the text and (2) the deme Acharnae belongs to the tribe Oineis. Yet a speaker elsewhere (Dem. 47.12) reports that arbitrators from that tribe held hearings in the Heliaia, whereas in 45.17 the hearing is said to have taken place in the Stoa Poikile (see further, 17n). For refutation of these arguments, see Trevett 1992: 182–183.

[54]The deposition starts with a challenge because the witnesses first attest a challenge; it ends with a will because the witnesses at the end of their testimony not only depose that Phormion's document is a copy of Pasion's will but also put that document into evidence.

dress such matters as these until I have first proven that the essentials, as it were, of the testimony are false.

[10] Well then, they testified that Phormion challenged me to open the "will" which Amphias the brother-in-law of Cephisophon was handing over to the arbitrator Teisias;[55] that I refused to open it; and that the document about which these men have given testimony is a copy of the "will."[56] The copy of the "will" came next. [11] Now I say nothing yet about the challenge—whether Phormion issued me *this* challenge or not, nor about the "will"—whether it is genuine or not;[57] I'll set these matters straight soon enough. As to their testimony, however, that I refused to open the document, consider the matter this way: why would anyone avoid opening the document? "In order, by Zeus, to avoid exhibiting it to the judges." [12] Well then, if the witnesses were planning to confirm in their depositions only the challenge and not the "will," there would have been some reason for refusing to open the document; but since these men were planning to confirm both and since the judges were going to hear the "will" in any case, how did it benefit me to refuse?[58] Not a bit, to be sure. Just the oppo-

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[55]See the Speech Introduction, n. 6, for the part played by the official arbitrator here.

[56]Apollodorus had been challenged to identify the will furnished by Phormion as a copy of Pasion's will by opening the sealed will furnished by Amphias and comparing the one to the other. Observe that the important document furnished by Amphias was not put into evidence (45.17); see 45.23n.

[57]Apollodorus speaks ambiguously if not misleadingly about the challenge; see the Speech Introduction at nn. 24–26. The statement here only casts rather vague doubt on the contents of the challenge and not on the question whether Phormion issued one or not. I have italicized "this" in "*this* challenge" to emphasize the point. Gernet translates correctly here: "Eh bien, je ne discute pas encore s'il y a eu ou non une summation de Phormion *en ce sens* . . ." (italics are mine).

[58]An argument of probability: if the challenge to open the document had materialized, there could have been no reason for refusing to open it; the document was not opened; therefore, the challenge did not materialize. The point of the argument is to turn attention to the authenticity of the will.

site, men of Athens: even supposing that these men had not issued me a challenge, but had made a mere assertion and someone had furnished a document for them, purporting to be a "will," [13] it would have been in my interest to issue them a challenge and to order them to open it. For if there had been any differences between the witness statements supplied by these men and the terms that were written in the "will," I should have then and there called upon numerous bystanders as witnesses and used the discrepancies as proof that the rest of their case had been contrived. But if the contents had been the same, I should have asked the man who furnished the copy to testify himself. And if the man had consented, I at least would have had a witness who could be held accountable. And had he declined, here again I would have had sufficient proof that their construal of events was a fabrication.[59] Moreover, on this hypothesis, I should have had to deal with one witness only instead of many as my opponents have made it out with their testimonies. Would anyone of you have chosen the latter course? No one, I think. [14] Well then, you cannot fairly believe anyone else would either. For in fact, men of Athens, in all endeavors in which resentment is present or a desire for gain or irritation or rivalry, each man will act in his own way according to

[59]The argument here is hard to follow. Apollodorus, by maintaining that his father made no will, assumes that any document purporting to be his father's will must be a forgery. If clauses in the "will" preserved by his opponents differed from witness statements about the "will," those differences would demonstrate that his opponents had botched their presentation of the forged document (i.e., he would catch them in their flawed presentation). If, on the other hand, the contents of the "will" and witness statements agreed, then Apollodorus would ask the person who furnished the document to testify, presumably to attest to the origin of the document. Because he assumes the document is fraudulent, the witness' testimony would "inevitably" demonstrate that the document did not originate with Pasion; but if the witness refused to provide that "inevitable" testimony, that, too, would prove the document was fraudulent since it would not be in the interest of Phormion's witness to deny its authenticity. The entire argument is predicated on the fraudulence of the will and does nothing to prove it.

his own character. But in all endeavors in which these emotions are absent and where there is time for a calculation of one's own interest, who would be so senseless as to abandon what is potentially beneficial and do something that would doubtless injure his own case in court? But these witnesses have represented me as doing what is neither reasonable nor logical, something no man would ever do.

[**15**] Furthermore, anyone could tell they are lying—not only when they attest that I refused to open the document but also when they attest a challenge at the same time as they do a will.[60] All of you know, I think, that challenges were devised for all cases that cannot be brought before you. [**16**] For example, it is not possible to torture anyone in your presence; to do this, a challenge is necessary.[61] Again, if any business has been transacted and has taken place somewhere outside the country, a challenge for this, too, is necessary, to sail or go where it transpired.[62] And so also

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[60]The argument of this and the following sections (15–20) is: it was unnecessary to use a challenge to compel Apollodorus to confirm Phormion's copy of the "will" as genuine since, according to his opponents, the original (i.e., the one in Cephisophon's keeping) might have been readily produced and put into evidence; see 45.23n. Again, an argument of probability: since the challenge was unnecessary, therefore it did not materialize.

[61]The interrogation of slaves under torture took place outside the courtroom. The challenge of one opponent to another to permit the torture, however, can be read to the court, along with witness testimony regarding the results of the challenge. A protocol for a challenge for torture to take place *during* a trial is adumbrated in Aes. 2.126 (a public slave is to be in attendance) and is generally thought to be exceptional. Another protocol is adumbrated at Dem. 47.17, for a challenge for torture immediately *before* entering the courtroom; in both instances, a herald is in attendance. Cf. 45.61–62: Apollodorus asks the secretary to read a challenge he claims to have issued Stephanus after the arbitration of the original suit and before the current trial. For further examples of challenges issued before the court or immediately before entrance, see Thür 1977: 78–79.

[62]In Dem. 32.4, the defendant alleges that the plaintiff (Zenothemis) had borrowed money in Syracuse, and in 32.18, the defendant reports that he subsequently had challenged the plaintiff in Athens to sail to Syracuse to appear before the authorities there.

in similar cases. But in a case where it is possible to make the documents themselves visible to you directly, what was simpler than to produce them openly? [17] Well, my father died in Athens and the arbitration took place in the Stoa Poikile[63] and these men have testified that Amphias produced the document for the arbitrator.[64] Therefore, if it really was genuine, they ought to have put the document itself into the *echinos*[65] and the man who produced it ought to have testified,[66] so that the judges might have given a verdict in accordance with the truth and after inspection of the seals;[67] and I, if anyone was wronging me, might then have proceeded against him in court. [18] But as it is, not a single witness has taken up the whole matter or has even testified in a straightforward manner as a person would testify to the truth, but each has testified to a part of the story, in the belief that he is indeed a clever man and that he will thereby escape paying the penalty: one witness says that he has in his possession a document on which the words "the will of Pasion" are written; another says he was sent by the first to present this document, but whether it is genuine or forged, he does not know.

[19] These men, by using the challenge as a cover, deposed to

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[63]The Stoa Poikile was located at the northern end of the Agora. Official arbitrations took place at various locations, depending on the tribe affiliation of the defendant. For example, Dem. 47.12 reports that arbitrations for the tribes Oineis and Erechtheis were held in the Heliaia; Pollux 8.126 reports that official arbitrations were carried out in temples (cf. Dem. 40.11 and Is. 12.9).

[64]Cephisophon gives the testimony at 45.19 that "Pasion's will" was left him by his father. It is his brother-in-law Amphias, however, who is said here to have handed over the "original(?) will" to the arbitrator. This suggests a close relationship between Cephisophon's wife and her sister, the wife of Amphias.

[65]See 45.23n.

[66]I.e., that his father received the document from Pasion and how his father knew it was Pasion's will. See 45.10n.

[67]There is no evidence that at Athens witnesses must affix seals to the wills they have attested, but there is some evidence that they did so as here and at Dem. 28.5; see Wyse 1904: 386–387.

a will in such a way that, while the judges would have felt more or less certain that it was my father's will (and I was prevented from saying a word about the wrongs I was suffering!), they themselves would now be detected as false witnesses—a result that they hardly expected.[68] [*To the secretary*] Please take up the testimony of Cephisophon that you may know I'm telling the truth.[69]

[TESTIMONY][70]

Cephisophon son of Cephalion of the deme Aphidna testifies that a document was left him by his father on which the words "Pasion's will" were written.

[20] Would it not have been a simple matter, oh judges, for this witness to have added to his statement, "And this is the document he is furnishing here" and for them to cast that into the *echinos*? But I think he thought this lie would deserve your resentment and you would impose a penalty on him, whereas to testify that a document had been left to him was trifling and insignificant.

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[68] For the difficulties in this sentence, see Sandys 1896: 75–77; I have followed Huettner's suggestions.

[69] The same testimony may have been given in Dem. 36.7.

[70] The essential details of this testimony are presented in identical language in other sections of the oration: that a document had been left to the deponent (45.20) and that the words "Pasion's will" had been written on it (18 and 21). The names of the deponent's father and deme, however, appear only here in the speech and suggest its authenticity: a Cephisophon son of Cephalion of the deme Aphidna, in charge of the Theoric Fund, appears in a decree of the Council in 343/2 (*IG* II² 223 C, lines 5–6); he may be the proposer of the law on walls ca. 337 (*IG* II² 244, line 2; for further references, see *APF* 8410). If authentic, the document lacks essential information: we would expect Cephisophon to have attested the origin of the document and its transfer from Pasion to Cephisophon's father (for the depositing of wills with third parties, see Is. 6.7 and 9.5). Possible explanations: (1) Cephisophon supplied this information in his testimony, and Apollodorus suppressed it on purpose when the speech was published; (2) it has been lost in the transmission of the documents to the text of the oration; or (3) the witness testimony was purposefully devised to be deficient. See further, 45.23n.

But it is precisely this omission that reveals and convicts my opponent of contriving the entire business. [**21**] For if the words "the property of Pasion and Phormion" or "concerning Phormion" or some such phrase appeared on the will, Cephisophon would reasonably have kept it for Phormion. But if, as he has testified, only the words "Pasion's will" appeared, wouldn't I of course have appropriated it, knowing that I was about to sue and also that its terms—if they were such as alleged—were detrimental to my interests and that I, as the heir, was also the heir of this "will"—if it really was my father's—as well as of the rest of my father's estate?

[**22**] That it was supplied to Phormion, that it bore Pasion's name, that it was ignored by me, these are proofs that the "will" is a forgery and that Cephisophon's deposition is false.[71] But I pass over Cephisophon. For neither do I have anything to do with him now nor did he attest anything at all about the contents of the document. [**23**] Nevertheless, consider how far this, too, men of Athens, contributes to the proof that these men have testified falsely: for if the same man [Cephisophon] who deposed to having the document in his keeping did not dare depose that the item Phormion furnished was a copy of the document he had, and if, moreover, these men [Stephanus and friends] could neither say that they were present at the time of its composition[72] nor that they saw the document opened before the arbitrator but indeed have themselves deposed that I refused to open it—well, then, by testifying that their document is a copy of the "will," have they not charged themselves with giving false testimony?[73]

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[71]These are proofs based on probability and circumstance; they are not demonstrative.

[72]I.e., when Pasion drew up the will; cf. the opening of 45.26 below. If the witnesses had been present, they may not have known its contents (a common argument: see, e.g., Is. 4.13, and for the contrary argument, Is. 9.7–13); see Wyse 1904: 386–387.

[73]Stephanus had testified that the document furnished by Phormion was a copy of Pasion's will (45.8 and 10). It is not at all clear that he and friends lied about the document, but there might be an omission: for even if Cephisophon had deposed to the transfer of the will by Pasion to his father (see 19n), he might not have additionally testified that Phormion's copy

[24] Consider further, men of Athens: if any person were to examine the testimony as it has been drafted, he would conclude that these men have utterly rigged it so that my father, rightly or wrongly, will appear to have written a "will."[74] [*To the secretary*] Take the testimony itself, and read it, stopping wherever I ask, so that I may show you the truth from the wording of the text.

[TESTIMONY]

They testify that they were present before the arbitrator Teisias when Phormion challenged Apollodorus as follows: if he denies that the document is a copy of Pasion's will . . .

[25] Stop. Observe the words "of Pasion's will." Now if they wished to testify truly, supposing that a challenge really and truly materialized—as in fact one did not[75]—they ought to have spoken in the way that follows. [*To the secretary*] Read the testimony once again from the beginning.

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was identical to the one in his keeping; the identification was to have been made by Apollodorus during the challenge. If this is a reasonably correct reconstruction, then there is an omission in the presentation of the evidence in support of Phormion, and that omission may have been overseen by Demosthenes (especially if he was already preparing for Apollodorus' lawsuit against Stephanus when he wrote Dem. 36 on behalf of Phormion): on the basis of Apollodorus' presentation, Phormion's witnesses seem to have provided no proof that his document is identical to Pasion's will, or at least identical to the one that was kept in the custody of Cephisophon. See the Speech Introduction at n. 36.

[74]The argument in this and the following sections (45.24–26) is as follows: the contents of the witness testimony are false because they assume that Pasion made the will, whereas he in fact made no will; the phrase "Pasion's will" ought not to have been used of the document, but rather, "the will Phormion claims was left by Pasion."

[75]The statement causes confusion and deliberately so: Phormion had issued the challenge, but Apollodorus had refused it. Consequently, Apollodorus can claim that the challenge never "materialized" since it had not been carried out. See text of the Speech Introduction at nn. 24–26.

[TESTIMONY]

They testify that they were present before the arbitrator Teisias . . .

We do bear witness; for indeed we were present. Read on.

. . . when Phormion challenged Apollodorus . . .

This, too, if indeed he was going to issue a challenge, they could have deposed properly.

. . . if he denies that the document is a copy of Pasion's will . . .

[26] [*To the secretary*] Stop right there. I daresay no one would have confirmed this testimony unless he had been present when my father was drawing up his will. Instead, he would have immediately said, "But how do we know whether Pasion had any will?" And he would have asked Phormion to write, just as at the beginning of the challenge, "if I deny the document is a copy . . ."—not "*of Pasion's will*" but "*of the will which Phormion says Pasion left behind*." For their expression was equivalent to saying that a will exists—which is the very thing they want you to believe, whereas the other expression was equivalent to saying that Phormion claimed there is a will. And doubtless there is a very great difference between a thing that exists and a thing that someone claims exists.

[27] Listen to me for a little while so as to know the many pressing motives for Phormion's fabrication of the will. In the first place, men of Athens, Phormion wanted to escape the penalty for having seduced the woman whose name it's not proper for me to mention, but whom you yourselves know even without my saying;[76] second, he wanted to secure all the property of my father that was in my mother's keeping; and finally, he wanted to obtain

[76]The woman is Apollodorus' mother, Archippe. Apollodorus claims that Phormion, by forging a will with a clause that confers Archippe on him as wife, legitimates the unlawful relationship he (allegedly) established with her before marriage.

control of all the rest of our property as well. You'll know that all this is true, once you've heard the "will" itself. Indeed, it will sound quite unlike the will of a father who writes for the sake of his sons but rather like that of a slave who has damaged the goods of his master and wants to escape the penalty.[77] **[28]** [*To the secretary*] Now read them the "will" itself, to which my adversaries have borne witness along with the challenge. And keep in mind my warnings.

[TESTAMENT]

> Pasion of Acharnae disposed of his estate as follows: I give my wife Archippe to Phormion, and as dowry I bestow on Archippe one talent owed from the property at Peparethus, another talent from here, a tenement worth a hundred minas, the female slaves and golden jewelry, and everything else she has in her keeping inside the house, all this I give to Archippe.[78]

You have heard, men of Athens, the size of the dowry: a talent owed from the property at Peparethus, a talent from here in Athens, a tenement worth a hundred minas, female slaves and golden jewelry, and "everything else," he says, "that she has in her

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[77] I.e., Phormion the (former) slave is trying to escape the penalty for seducing Archippe.

[78] The document had been cited in Dem. 36.7 but is not preserved there. Is it authentic here? All its details, except for the name of Pasion's deme, could have been gleaned from the speech. Moreover, the document omits: (1) witnesses to its authorship; (2) the name of the person who held it in custody; (3) witnesses to its transfer into the custody of that person; (4) mention of Pasicles' guardians and the arrangement by which the estate was not to be divided until Pasicles came of age (36.8); and (5) mention of the apartment building that Apollodorus was to receive as elder brother (36.34). Thus, either the document is not genuine (i.e., it was forged by, e.g., a later grammarian) or it is genuine but abridged (e.g., by Apollodorus for use in court). See further Trevett 1992: 183–184.

keeping, I give to her"[79]—with this clause, he even keeps us from searching for anything left behind.[80]

[29] Now let me show you the "lease" by which Phormion had taken over the bank from my father. For in fact this document, although a forgery, will allow you to see that the "will" is a total fabrication. I'll show you the lease that Phormion produced—not a different one—in which a clause has been added in writing, that my father owes Phormion eleven talents on the deposits.[81] The circumstances, I think, are something like this. [30] Phormion took control of the household goods, as you have just now heard, by virtue of the "will," on the grounds that they had been bestowed as dowry on my mother; but he took control

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[79]The size of the dowry (220 minas plus gold and servants and more) is enormous. Demosthenes' mother was given a dowry of 50 minas when she wed his father and 80 minas for an intended (but unfulfilled) marriage to Aphobus; his sister was given 2 talents (120 minas) for a future marriage to Demophon (Dem. 27.4, 5 and 29.43); the mother of Mantitheus was given 60 minas (Dem. 40.6); and the two daughters of Polyeuctus, 40 minas each (Oration 41.3). The gift of the "tenement" to Archippe is puzzling: only citizens or metics by special grant could own land or buildings. Was Archippe, then, a citizen? It does not appear that she had been made so by the decree that granted citizenship to Pasion and his offspring. Whitehead 1986b proposes that Archippe's status was indeterminate: she could inherit the tenement (as a citizen), and she could, after her husband's death, marry the metic Phormion (as a metic). Carey 1991 argues that Archippe remained a metic during and after her marriage to Pasion; the tenement was to be sold (she would not "own" it) upon Pasion's death. Davies 1971: 429 leaves the question open. Another possibility is that Archippe was a poor Athenian; if she married ca. 395, as Davies proposes (when Pasion was a metic), then only a small pool of citizen men may have been available after the Peloponnesian War. While marriages between citizen and noncitizen may not have produced children with full civic rights, the marriages in themselves may not have become invalid until the 340s.

[80]Cf. Dem. 40.14–15, where property that has not yet been divided and dispersed is available for searching.

[81]Namely, "on the deposits that had been put out at interest." It was to reclaim this sum (with interest added?) from Phormion that Apollodorus had brought suit against Phormion. The suit had been barred by the *paragraphē* (Dem. 36); see the Speech Introduction at n. 21, and below, 45.32n.

of the money and valuables in the bank, which everyone knew about and which could not be concealed, by declaring that my father was in debt—so that whatever sum or valuables he might indisputably be shown to have in his keeping, he might pretend to have recovered in discharge of this debt. You perhaps have assumed that because he makes mistakes in speaking, Phormion is a contemptible barbarian.[82] And the fellow is a barbarian insofar as he hates those whom he should respect, but when it comes to committing petty crimes and undermining businesses, he has no equal.

[31] [*To the secretary*] Take up the "lease" now and read it—the one they put into evidence in the same way, under cover of a challenge.

[LEASE OF THE BANK]

> Pasion leased the bank to Phormion on the following terms: Phormion is to pay Pasion's children an annual rent for the bank of two talents and forty minas apart from the daily expenditures. It is not permissible for Phormion to run the bank on his own unless he has the agreement of Pasion's children. And Pasion owes the bank eleven talents for the deposits.[83]

[32] Well, this is the agreement, judges, that Phormion produced, alleging he leased the bank on these terms. You learn from

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[82]Phormion's non-Greek (= *barbaros*) origins (mentioned again in 45.73 and 81) may be true or not. The Greek word *barbaros* originally referred to the incoherent sounds of all languages except for Greek. It came to include all non-Hellenic customs and characteristics, including the pejorative overtones of our English word "barbarian."

[83]The document could be spurious; all its provisions are stated in the next section (45.32). Trevett 1992: 184–185 notes these omissions: (1) the full names of the parties; (2) the duration of the lease; (3) legal actions for nonfulfillment (e.g., an action for damages); (4) the identification of the bank (e.g., location); and (5) the shield factory (cf. 36.4: the factory and bank were leased together). The amount of the rent for the bank (two talents and forty minas) both in the document and in the following section is inconsistent with 36.11, where the speaker reports that the factory produced one talent and the bank one hundred minas.

the reading of the document that Phormion is to pay an annual rent—not counting in the daily expenditures—of two talents and forty minas, and that he is not to run the bank without our agreement. And last of all a clause has been added: "And Pasion owes eleven talents for the deposits."[84] [33] Now is there anyone who would have ever agreed to pay so high a rent for the banker's table, the site, and ledgers?[85] And is there anyone who would ever have entrusted the remaining assets to the man through whom the bank had incurred so much debt?[86] For if there was a deficit of so vast a sum, it was incurred when Phormion was managing the bank. For you all know that even when my father was in charge of the bank, Phormion was sitting at the table and acting as manager, so he ought to be assigned to labor in the mill rather than be awarded control of the remaining property.[87] But I pass

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[84]The speaker in Dem. 36.6 had explained Pasion's debt of eleven talents to the bank this way: Pasion had taken that sum from deposits in the bank and put them out as loans in business ventures to collect interest; those who borrowed the deposits used land and apartment houses as security. Since Phormion was not yet a citizen when he first leased the bank and since only citizens could own land and buildings, Phormion would himself have been unable to take possession of the security (land and buildings) if the borrowers defaulted. Hence Pasion remained the "debtor," although he was in fact the "creditor" who had loaned the bank deposits. Most scholars have believed this explanation; see Trevett 1992: 43–47.

[85]Apollodorus is trying to cast doubt on the genuineness of the lease by suggesting that no one would pay so pricey a rent for a bank so encumbered with debt. The banker's "table" is here designated (unusually) in Greek as *xylon* (lit., "a piece of wood") but more often as *trapeza*; it is the place where money was exchanged and where other banking transactions took place; *trapeza* also meant "bank" and still does in Modern Greek.

[86]Apollodorus treats the eleven talents as if they were a deficit created by Phormion (whereas if one believes Dem. 36.6 [see 45.32n], the eleven talents were owed to Pasion as the creditor who had loaned the deposits). In any event, Apollodorus blames Phormion for having caused the bank to incur a debt and claims that he forged the clause regarding Pasion's debt to conceal his own peculations. The argument is repeated at 45.47 and at 46.17 and 27.

[87]Laboring in the mill was considered an activity (often penal) for slaves: Lys. 1.18; Terence *Phormio* 249; and frequently in other New Comedy plays.

over these matters and everything else that I could say about the eleven talents—since my father didn't owe them—rather, Phormion filched them for himself.

[34] Now let me remind you that I read the lease in order to prove the will is a fake. For it is written right there in the lease, "It is not permitted for Phormion to run the bank on his own unless he has the agreement of Pasion's children."[88] This clause clearly shows the will is a fake. For would the man who had taken steps to ensure that the profits that Phormion was likely to earn when running the bank should accrue to his own children rather than to Phormion, and who had for that reason added the clause forbidding Phormion to run the bank on his own—so that his interests would not be dissociated from ours—would that same man then have arranged for Phormion to appropriate all that he had himself earned in his lifetime and was leaving behind at his death? [35] And would he have refused Phormion the banking business—when giving him a share in it would have brought no disgrace—but have given him his wife—a gift more disgraceful than any he could have bequeathed—and *after* he had received from you the gift of citizenship,[89] would he then have acted as a slave who makes a wife over to his master rather than the opposite (if indeed there was any "making over" at all), as a master to his slave[90]—and would he have added a larger dowry, it seems, than

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[88]This clause seems to aim at preventing Phormion from conducting outside business on his own account, but it would not have prevented him from acquiring additional (new) assets that would belong to him rather than to the bank's owner; see Cohen 1992: 189. Sandys 1896: 88 comments that Apollodorus "seems rather unfairly to suggest that Phormion was allowed to make no profit whatsoever out of the lease."

[89]That Pasion should have "bequeathed" his wife to Phormion is not a matter of disgrace. Such bequeathings of wives were not uncommon: Demosthenes' father bequeathed his wife to Aphobus with a large dowry (Dem. 27.5), and the speaker of Speech 36 mentions three bankers who bequeathed their wives to their former slaves (36.29). What Apollodorus claims is disgraceful, however, is the bequeathing of Archippe to a man who had not (yet) been awarded citizenship at a time when Pasion had been.

[90]Sandys (1896: 89) explains the sentiment this way: "Pasion's gift of his wife with a large dowry . . . is the kind of gift a slave might offer his master

anyone in our city ever conferred?[91] [**36**] And yet for Phormion, this in itself would have been satisfying: to have been deemed worthy of my father's wife; but not even if my father pocketed a sum as large as these men pretend he freely handed over,[92] would it have been reasonable for him to have made this arrangement. Nevertheless, to matters that are proven false by probabilities, by timing, by facts, to all of these the defendant Stephanus has not scrupled to attest.

[**37**] Then Phormion goes around saying that Nicocles testified to having been guardian under the "will" and Pasicles to having been his ward under the "will."[93] But these very statements, I think, are proof that neither those men [Nicocles and Pasicles] nor the men who are here [Stephanus and friends] have testified to the truth. For clearly the man who testifies that he served as guardian under a will would know the terms of the will, and the one who testifies that he was a ward under a will would know its terms too. [**38**] [*To Stephanus*] What then induced you all to testify to the "will" in the course of a challenge instead of allowing those men to testify? For if they in turn will deny knowing the terms of the will, how could you know [the terms], when you have had no connection at all to the matter? Why in the world then does one group of witnesses testify to one set of facts, and another group to another set? As I said earlier:[94] they parceled out the unlawful depositions, and so the one testifying that he served as guardian under the "will" did not think it was a terrible offense to testify just so and the one testifying that he was a ward did not think so either, [**39**] inasmuch as each of them declined to attest the terms that had been written into the "will" by this man [Phormion]; no, it wasn't a terrible offense to depose that his

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in acknowledgement that all the slave had belonged by right to his master, and not such a gift as might be expected from a superior to an inferior."

[91]For the size of the dowry, see 45.28n.

[92]I.e., not even if he had received *as a bribe* from Phormion (so the latter might have his wife) the same large amount the defendants pretend (via the forged will) that he gave as a dowry, would he have made this arrangement.

[93]The evidence of Nicocles is not expressly mentioned in Oration 36; that of Pasicles is referred to in Dem. 36.22.

[94]See 45.18.

father had left behind a document with the word "will" written upon it or to depose to other such things. But to testify to a "will" involving the theft of so much money, the seduction of a wife, the wedding of a mistress [to her slave]—matters of such disgrace and insolence, no one was willing to do so—except these men, who contrived the challenge and from whom it's right to exact justice for all their scheming and villainy.

[40] Now, men of Athens, so that it's clear to you that Stephanus here has testified falsely not only from the accusations and arguments but also from the activities of the man who is furnishing him as a witness, I want to tell you about that man and his deeds. And as I said at the beginning of this speech, I'll demonstrate that these men are their own accusers. For Phormion initiated the trial to bar my lawsuit against him; testimony was given there that my suit was "not admissible" because I had given him a release from the charges.[95] [41] Now I know this is a lie, and I'll prove it when I proceed against the men who gave that testimony; but Stephanus cannot address that issue. Well then, if you were to *assume* [for the sake of argument] that there really was a release, this, too, would be especially good proof that Stephanus has testified falsely and has acted as witness to a will that was forged. For no one would be so foolish as to give a release in the presence of witnesses so that a quittance from counterclaims would be guaranteed to him and yet allow the terms of the "lease" and the "will" and other documents concerning which he gave the release to be sealed up as evidence and stored away to his detriment.[96] [42] The special plea to bar action is therefore inconsistent with all the tes-

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[95]See above, 5n, for "release."

[96]The sentence might more easily be understood if rendered in the first person: "For I would not be so foolish as to give a release [to Phormion] in the presence of witnesses so that a quittance from counterclaims [from Phormion] would be guaranteed to me and yet allow the terms of the 'lease' and the 'will' and other documents concerning which I gave the release to be sealed up as evidence and stored away to my detriment [so that those documents might be used to set up later claims]." The "quittance from counterclaims" translates the Greek word *apallagē*; for discussion, see Isager and Hansen 1975: 228–237.

timony,[97] and the lease that I read to you just now is inconsistent with this "will."[98] And not one of their acts is reasonable or simple or consistent with itself. In this way, all is proven to be prevarication and fraud.

[43] Well then, I think neither Stephanus himself nor any other man speaking on his behalf will be able to prove that the witness testimony is true. Yet I hear that he is rehearsing some such argument, to the effect that he can be held accountable for the challenge, not the deposition, and that it's none of his business to give an account of the whole of the written document but only for two of its items, namely, whether or not Phormion issued me this challenge and whether I accepted. For these are the only items, he will claim, to which he has borne witness; as for the rest, he will say that Phormion issued the challenge, but to consider whether its contents were true or false has nothing to do with him.

[44] In response to this shameless argument, it's better for me to say a few words beforehand, so that you're not caught off guard and misled. First of all, whenever he tries to say this, that he's not accountable for the whole deposition,[99] reflect that the very reason why the law bids the witness to give testimony in written form is to prevent him from subtracting or adding to the items that have been put in writing. Accordingly, it was *then* that he should have ordered them to erase the particular items that soon he'll say he has not witnessed—and not order them erased *now*, when those items are part of the deposition, should he have the impudence to repudiate them.[100] [45] Second, consider this, too: would you al-

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[97]I.e., the plea to bar action, because it was grounded on a release that Apollodorus claims never to have given Phormion, is accordingly inconsistent with the very existence and preservation of the documents attested by the witnesses. Had such genuine documents existed to his prejudice, Apollodorus would have suppressed them.

[98]That the lease is inconsistent with the will was insinuated at 45.34 and is hammered home at 46.17.

[99]Cf. Dem. 46.1.

[100]Additions or subtractions to testimony furnished by litigants for private cases that were first heard by an official arbitrator might be made when the witness was asked to confirm the deposition during the arbitration. Once the witness testimony was handed in to the official arbitrator before

low me, in your presence, to take hold of the document and add something to it? Of course you wouldn't. Well then, it's also not proper for you to allow Stephanus to make subtractions from the written statement. For who will ever be convicted of giving false testimony, if a witness will testify to what he pleases and then be held accountable only for what he pleases? No, the law does not make this distinction[101] nor ought you to listen to such arguments. Rather, the questions at issue are straightforward and fair: "What has been written? What have you deposed? Show that the deposition is true." [*To Stephanus*] For in fact, in response to the charge, you pleaded this: "I have testified truthfully, when I testified to the written contents of the document," not "when I testified to this and that particular item in the document."

[**46**] To prove this is so, please take up the response itself. Read it.

[WRITTEN RESPONSE][102]

Apollodorus, son of Pasion, of Acharnae, against Stephanus	<Stephanus son of Menecles of Acharnae> I testified to the

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the court hearing, the witness could not change that testimony. In court, he would confirm the written document in toto or else swear an oath of denial (*exomosia*) to its entire contents. See further 45.58n and 46.11n.

[101]The distinction is between portions of testimony for which the witness chooses to be accountable and portions for which he chooses not to be accountable.

[102]The title "Written Response" (*antigraphē*) would seem to refer only to the defendant; cf. 45.87 (and similarly Hyp. *Eux.* 4 and 31). It is impossible to tell whether the document is authentic. A writer of the second century AD (Pollux 8.58) quotes it; that signifies only that the document had entered the Demosthenic corpus by that time. The appearance of the charge and plea in separate columns is a modern typographic convention and does not iterate the manuscript presentation. The wording of Stephanus' plea here is almost identical to that in 45.45. Apollodorus' charge, however, includes the only mention in the two speeches of the penalty he seeks; the amount is hefty but not extravagant, given that Apollodorus had been fined over three talents for losing the special plea (see the Speech Introduction, n. 5)—but Stephanus is only the first witness that Apollodorus sues; he says in 45.7 and 40 that he plans to sue others.

son of Menecles of Acharnae for a suit for false witnessing: penalty one talent. Stephanus testified against me falsely when he testified to the written contents of the document.

truth when I testified the written contents of the document.

This is the plea that Stephanus himself entered in response to the charge. You should keep it in mind and not consider the arguments that he will soon adduce to deceive you as more credible than the laws and the statement he wrote in his plea.

[47] Furthermore, I hear that these men also plan to address the complaint for which I tried to obtain a hearing at the outset and that they are going to denounce it as frivolous and vexatious.[103] But I have told you and explained in detail how Phormion fabricated the lease so as to acquire the bank's capital, and I could not possibly speak about other matters and at the same time convict these men of giving false testimony: there is not enough water.[104] [48] And you'll realize that it would be reasonable to refuse to hear arguments about these matters too, as soon as you consider among yourselves that it's quite easy in the present trial to speak about matters that aren't part of my charge, just as earlier it was easy for Phormion to be acquitted by reading false testimony. No one, of course, would say that either of these strategies is just, but rather the one that I am going to propose right now. Listen and consider. [49] For I myself think they should stop at once their hunting for arguments and proofs connected to the charges [belonging to the original trial], arguments and proofs that would properly have been adduced [then]—but which they prevented me [from mentioning]; rather, they should prove that

[103]The "hearing at the outset" is the lawsuit that Apollodorus initiated against Phormion to recover twenty talents from him; that suit was never heard because Phormion took action (by a *paragraphē*) to block it and was successful in so doing. Apollodorus' apparent overwhelming loss of the special plea left him open to vilification for "frivolous prosecution." See 45.5n.

[104]See Dem. 40.38n.

the witness testimony by which they deprived me of them is true. But if they demand that I refute the witness testimony when I am bringing this suit, and then when I do attack that, they tell me to address the charges of the original suit, they will speak neither justly nor in your interest. [50] For you have sworn to give a verdict not on the issues the defendant asks you to consider but rather on those on which the plaintiff's case is made. Those issues must be clearly articulated in the plaintiff's charge, which belongs to the suit for false witnessing that I have lodged against this man. Don't let him set this aside and speak about matters that aren't relevant to this trial. Don't allow it, no matter how impudent the defendant should be.

[51] Now I think that since Stephanus will be unable to find any just argument at all, he will even resort to this defense: that I am acting perversely because, after losing in the hearing of the special plea, I am suing the witnesses to the will. Furthermore, he will say that the judges in that earlier hearing voted to reject my lawsuit because of the witnesses to the release rather than the witnesses to the will.[105] But I, men of Athens, think all of you know it is your custom to examine the main issue of the case no less than the special pleas that are made about them. In fact, these men, by testifying falsely against me about the main issues, crippled my arguments about the special plea. [52] But aside from this, it is perverse, when all the witnesses testified falsely, to be proving who caused the greatest damage rather than showing how each person has himself testified truthfully. For it's not proper for the defendant to be acquitted if he should prove that another individual has done something worse, but only if he himself should prove that he has witnessed truthfully.

[53] Hear now, men of Athens, why it is especially just for the defendant Stephanus to be put to death.[106] For although it's a terrible deed for a man to bear false witness against anyone, it's

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[105]See the Speech Introduction, nn. 9 and 29, for the distinction between the issues in the special plea and the main issues in the lawsuit that was barred by the special plea.

[106]Outrageous hyperbole: the offense of giving false testimony is not a capital crime.

far more terrible and deserves greater anger if the false testimony is given against kinsmen. For a man who does that destroys not only the written laws but also the natural ties of kinship.[107] Now Stephanus will be shown to have done precisely this. [**54**] For his mother and the father of my wife are siblings, and so my wife is his first cousin, and our children are [his] first cousins once removed. Do you think, then, that this man—if ever he saw any of his female relatives doing anything immoral because of poverty,[108] do you think he would do what many men have done in the past—provide dowries from his own purse and marry them off—a man who consented to give false testimony in order to prevent these female relatives from recovering what was proper for them to recover,[109] and who set greater value on Phormion's wealth than on the ties of kinship? But to prove that I am indeed telling the truth, [**55**] [*to the secretary*] take up the testimony of Deinias and read it and call Deinias.[110]

[TESTIMONY]

Deinias son of Theomnestus of the deme Athmonon testifies that he gave his daughter to Apollodorus to have as his wife in accordance with the laws and that he was never present and did not even know that Apollodorus had released Phormion from all claims.[111]

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[107]The same phrase appears at Lyc. 1.131.

[108]He is referring to prostitution; cf. 59.112–113.

[109]The "female relatives" are Apollodorus' daughters. His cospeaker at Dem. 59.8 mentions concern for the dowry of Apollodorus' unmarried daughter.

[110]Deinias is the father of Apollodorus' wife and also the uncle of the defendant Stephanus; he is mentioned in Dem. 36.15 and 17 and 50.24–27. Deinias' son Theomnestus, Apollodorus' brother-in-law, speaks the opening sections of Dem. 59, before Apollodorus steps in and takes over the prosecution.

[111]It is impossible to determine the authenticity of the document. Theomnestus, the name of the grandfather of Apollodorus' wife, is likely to be correct as it is also the name of his grandson (Dem. 59.2 and 16): names often skipped generations (thus: Theomnestus, Deinias, Theomnestus); cf.

[56] How like Stephanus, oh judges, is Deinias! On behalf of his daughter and his daughter's children and me his son-in-law, because of the tie of kinship, he refuses to give even *true* testimony against the fellow.[112] But not so this Stephanus here. He didn't shrink from testifying falsely against us; no—even if he felt no shame before anyone else, he might at least have felt some before his mother when he made himself responsible for the destitution of her relatives.

[57] Now, I want to tell you my worst experience, judges, the one that caused me the greatest perplexity when I appeared in court earlier, since you will see even more vividly the villainy of this fellow, and I, by fully recalling this bitter episode, shall feel, as it were, disemburdened. For the deposition that I thought was there and that provided the best proof for my case, I discovered was missing from the *echinos*.[113] [58] At that moment, as I was deeply disturbed by the loss, I could imagine nothing else but that the magistrate had wronged me and meddled with the *echinos*. But from what I've learned subsequently, I find that Stephanus here, in the presence of the arbitrator himself, stole the document when I stood up to put a witness under oath for his testimony.[114] And to show that I'm telling the truth, first, the men who were

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39.27n. The deme name (Athmonon) is not attested elsewhere for a Deinias or a Theomnestus.

[112]Sandys 1896: 101 thought that Deinias refused to confirm the testimony and that it should therefore be followed by the term *exomosia* ("an oath to deny testimony"; cf. 45.60). Trevett 1992: 185, following Drerup 1898: 338–339, suggests another interpretation: "The point that Apollodorus is making is not that Deinias refused to testify at all, but that out of loyalty to a kinsman he refused to say anything that might harm Stephanos. Accordingly, he made a bland statement which would offend neither of his quarrelling kinsmen." Cf. Dem. 49.38.

[113]See 45.8n.

[114]What might the allegedly stolen testimony have proven? It is impossible to guess. That Apollodorus makes no comment on its specific contents (only the general statement that it "provided the best proof" for his case) suggests he is only using the "theft" to color Stephanus as a customary tool of Phormion in various prosecutions: he will steal for him, lie for him, sail to the Bosporus to plead for him (45.60).

present, the eyewitnesses, will testify before you. Indeed, I don't think these men will want to take an oath of denial.[115] [**59**] But if in fact they have the impudence to do so, [the secretary] will read to you a challenge on the basis of which you will catch these men in the act of foreswearing themselves and at the same time will know that this man stole the testimony. And indeed, men of Athens, in the case of a man who endured the nickname "thief of the misfortunes of others"[116]—what do you think he would do on his own behalf?

[**60**] [*To the secretary*] Read the testimony.

[TESTIMONY]

They testify that they are friends and intimates of Phormion, and they were present before the arbitrator Teisias when there

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[115]When did Apollodorus first ask the "eyewitnesses" to the theft to testify? Apollodorus' language certainly suggests that while his discovery of the theft occurred during the arbitration, his demand for the testimony of the "eyewitnesses" is happening now for the first time in the courtroom. Witnesses are summoned in advance of hearings. The litigant writes out a statement for the witness who is either to confirm it or to take "an oath of denial"—meaning, "he was not present or knew nothing of the matter" (*exomosia*: see Harrison 1971: 143–145). For cases that were first heard by an official arbitrator (as in this case), the witness is to confirm or deny the statement both at the official arbitration and later at the hearing-in-chief; no additional evidence could be added after the arbitration. Apollodorus is distorting chronology: his request for the testimony took place during the arbitration, and the witnesses will have given the oath of denial at that time. Here he *pretends* to be uncertain of their response: this is rhetorical grandstanding. He has taken into account the oath of denial and uses the opportunity first to have the unsavory "testimony" (which he or his speechwriter has written!) read aloud to the judges and then to blast the character of the witness who denies it. Similarly, Thür 2005: 167.

[116]The meaning is uncertain (is he a thief of items that by their loss—as the loss of the document from the *echinos* here—become a source of misfortune for the victim?). Although the text is probably corrupt, no credible emendation has yet been suggested. Perhaps the phrase has something to do with banking; possibly Stephanus takes over loans from defaulters on the edge of bankruptcy and sells them at great profit (cf. 45.70).

was a decision in the arbitration of Apollodorus' case against Phormion, and they know that Stephanus stole the testimony that Apollodorus charges him with having stolen. [*To the witnesses*] Either consent to the testimony or take the oath of denial.[117]

[OATH OF DENIAL]

[61] It wasn't unforeseeable, judges, that they would act this way—swear the oath of denial so eagerly.[118] Well then, to prove here and now that they have sworn falsely, [*to the secretary*] please take up this deposition and the challenge. Read.

[TESTIMONY. CHALLENGE]

They testify that they were present when Apollodorus challenged Stephanus to hand over the attending slave boy for examination under torture concerning the theft of the document and that Apollodorus was ready to write out the terms under which the interrogation was to take place;[119] and further, that when Apollodorus issued the challenge, Stephanus refused to hand over the boy but replied to Apollodorus that he should go ahead and sue him if he liked, if he claimed that he was being wronged by him in any way.[120]

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[117]No inferences regarding the authenticity of this document can be made; the absence of the witnesses' names could be a copyist's abridgement. That the decision in the arbitration is mentioned *before* the testimony regarding the theft of the document probably does not mimic the chronology of events (which would be impossible: no new testimony can be added after the arbitrator seals the *echinos*). The (alleged) fact that the witnesses stayed until the decision was made may have been stated first to indicate their friendship with Phormion.

[118]See 45.58n.

[119]See Isoc. 17.15–16 for one individual's terms for the torture of a slave and Mirhady in Mirhady and Too 2000 ad loc. for comments.

[120]As in the immediately preceding testimony, no inferences regarding the authenticity of this document can be made; the absence of the witnesses' names could be a copyist's abridgement. The issuing of the challenge

[**62**] Who, then, judges, where such a charge is concerned, if he trusted his innocence, would not have welcomed the interrogation? Accordingly, by avoiding the interrogation, he is proven to be a thief. Really now, do you think that a man who doesn't flee the reputation of a proven thief would feel much shame at acquiring that of a false witness? Or that such a man would hesitate to testify falsely if anyone asked him, a man who, without anyone's bidding, voluntarily played the scoundrel?

[**63**] Now then, men of Athens, though Stephanus would justly pay a penalty for all these wrongs, there is far more reason for you to punish him for the rest of his behavior.[121] Observe and be examiners of the kind of life he's led. For so long as success attended Aristolochus the banker, Stephanus used to go out walking, keeping pace with him, truckling to him, and many of you who are present here know this.[122] [**64**] But when he was bankrupted and lost his property—not least of all because he was plundered by the defendant and men of his ilk, Stephanus never stood by his son or helped him out in the midst of a torrent of litigation, but Apolexis and Solon and the whole world came to the rescue rather than he.[123] After that, Stephanus had his eye on Phormion and befriended him—he had picked him out from all the Athenians;

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to Stephanus was doubtless tit for tat and was meant to be prejudicial. If the deposition reflects the genuine challenge, it brilliantly colors Stephanus as a man who asks to be sued.

[121]In this and the following sections (45.63–70), Apollodorus vilifies Stephanus for conduct that has little or nothing to do with the current trial for false witnessing: he toadies to rich men and deserts them when they suffer reverses; although rich, he expends no money on public service; he is an unscrupulous moneylender.

[122]Aristolochus is also mentioned at Dem. 36.50. Davies *APF* 1946 suggests he may be identified with the trierarch Aristolochus son of Chaeredemus of Erchia, who served numerous trierarchies. Trevett 1992: 161 suggests he may have been of servile birth and later made a citizen (hence the addition of the name of the deme Erchia in the inscriptions that indicate his trierarchies).

[123]An identification of Apolexis with other Athenians of that name (e.g., Dem. 43.48) cannot be made; nothing is known of this Solon.

then, acting as his agent, he left the city and sailed to Byzantium when the men of that city had taken possession of Phormion's ships and he pleaded the case against the Calchedonians,[124] and he has given false testimony against me in this flagrant manner.[125] [**65**] And so a man who is a flatterer of men when they enjoy success and a betrayer when the same men suffer reversals, a man who doesn't deal on an equal footing with any of the mass of decent and worthy citizens but instead readily falls at the feet of men like Phormion and who, in doing this, doesn't care whether he will wrong any of his kinsmen or whether he will acquire a bad reputation among other men, but cares for one thing, how to enrich himself—isn't it fitting to detest this man as the natural and common enemy of all humanity? I would surely say, "Yes."

[**66**] Moreover, men of Athens, Stephanus deliberately chose to engage in disgraceful activities, turning his back on the city and concealing his wealth in order to make invisible profits through the bank[126] and to avoid serving as chorus producer or trierarch or carrying out any other civic duty. He's a great success. Proof: although he has so much wealth that he bestowed a hundred minas as dowry on his daughter, you haven't seen him carry out a single public service—not even the most trivial—for the city. Yet how much better is it to be counted a man of public spirit, eager to serve the needs of the city, rather than a flatterer and false witness! But he would do anything to make a profit. [**67**] And surely, men of Athens, you ought to feel greater anger at scoundrels who are well off rather than at those who dwell in poverty. For in the case of the latter, the exigencies of their condition inspire men who

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[124]Calchedon is a city opposite Byzantium. That Phormion has ships engaged in trade in the Bosporus is another indication of his wealth. Nothing is known of the seizure of the ships or the lawsuit.

[125]Stephanus is Phormion's agent and is accustomed to acting as his advocate in lawsuits. In Apollodorus' view, he is clearly on Phormion's side and cannot act as a fair witness.

[126]Stephanus' profits are "invisible" (*aphaneis*) because banking transactions are usually unknown to anyone, save for the banker and his client. For the common distinction between "visible" and "invisible" property, see Cohen 1992: 191–194 and Dem. 48.9n.

judge compassionately to make allowances while scoundrels who rise up from wealth—as Stephanus did—would have no good excuse to offer but will manifestly be shown as acting from a sordid love of gain and greed and insolence, and from a self-assessment that accords their own interests greater importance than the laws. None of this conduct is in your interest, but it is in your interest that a weak man, if he suffers wrong, should be able to get justice from the wealthy. This will happen if you punish men who are thus manifestly scoundrels because of their wealth.

[68] Moreover, you would be wrong to construe this man's composure as he makes his way along the walls with a scowling face as a sign of somber sagacity; really, it's a sign of misanthropy.[127] In my opinion, a man who spends his life posturing himself so when he's suffered no terrible misfortune and lives in comfort, that man, I think, has taken a broad look around and drawn the conclusion that men with pressing requests and proposals in mind immediately approach those who, with good cheer on their shining faces, walk in a simple and natural way, whereas anyone would think twice before approaching a man with his features composed in a scowl. **[69]** This demeanor, then, is nothing but a mask for his real character and reveals therein the real ferocity and bitterness of his plotting mind. Here's proof. [*To Stephanus*] You're far richer than you have any right to be; yet to whom among the multitude of Athenians did you ever make a contribution or to whom have you lent any aid? Whom have you treated well? [70] You couldn't name a single person. But lending on interest and counting the misfortunes and debts of others as your own piece of good luck, you ejected your own uncle, Nicias, from his ancestral household and you have robbed your mother-in-law of the resources on which she was living and you have done your part to turn the son of Archedemus into a homeless man. And no one has ever exacted payment from a defaulter so harshly as

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[127] For similar descriptions of comportment with attendant analysis, see Dem. 54.34 (scowling countenance); Plato *Charmides* 159B ("walking quietly in the streets" is a sign of *sophrosynē* or "self-control"); Theophrastus *Characters* 24.8 (the "arrogant man" walks with gaze downward, addressing no passersby). Cf. 45.77.

you exact interest from debtors.[128] So, the man whom you see so fierce and abominable all the time—when you have caught him in the act of wronging you, will you fail to punish him? That, men of Athens, will be a terrible and unjust act.

[71] Well then, it will also be justifiable, men of Athens, for you to feel resentment at the conduct of Phormion, who furnished this man as a witness, once you've seen the impudence and ingratitude of his character. All of you know, I imagine, that if a cook or some other artisan had chanced to buy this man when he was for sale, he would have learned the skill of his master and would have none of the wealth he now enjoys. [72] But since my father who acquired him was a banker, and since he taught him to read and write and trained him in the business and put him in control of vast sums of money, Phormion has prospered, for the good luck of his arrival at our door was the source of all his present blessings. [73] Just consider the men who made him a Greek instead of a barbarian, a man of note instead of a slave, and who put him on the path to so much advantage—oh earth and gods, isn't it scandalous and worse than scandalous that he should allow these men to suffer the extremes of poverty—while he is rich and prospering—and further, that he should have so perfected his shamelessness that he doesn't venture to give us a share of the fortune that he had from us? [74] No, indeed, this fellow didn't hesitate to wed his mistress and live in wedlock with her—though she had showered him with nuts and figs on the day he was purchased,[129] or to write himself down for a dowry of five talents apart from the property over which he took control since it was in my mother's keeping (for why else do you think he wrote into the will "and everything else, I give to Archippe"?)[130]—and yet he

[128]Apollodorus exploits the unpopularity of moneylenders at Athens; cf. Dem. 37.52.

[129]Nuts and figs (ancient "confetti") were scattered over newly purchased slaves as they entered their new household (see Aristoph. *Wealth* 768). The same "confetti" was used for bride and groom crossing the threshold (see Oakley and Sinos 1993: 34 and n. 89 and figs. 60–61).

[130]Cf. 45.28, where the will is cited and then paraphrased.

disregards our daughters who are doomed to grow old inside our house, unwed because of poverty!

[75] Indeed, if Phormion had been a poor man and it were our luck to be rich and if any accident had befallen me (as happens to many a man), Phormion's sons would have claimed my daughters in marriage—the sons of the slave claiming the daughters of his master! Yes, for they are their uncles since he took my mother as his wife.[131] But since we are the poor ones and he won't, under these circumstances, aid in dowering them, he just talks on and on and calculates the amount of property I have.[132] [76] In fact, this is the oddest point of all. To this very day, he has refused to render an account of the property he's taken from me: instead, he brings a special plea that my suits are not admissible; and as to what I was given from my paternal estate—he gives a precise computation of this![133] Other servants you might see narrowly examined by their masters; this one does quite the contrary—though a slave, he brings his master to account, aiming to put him on display as a prodigal scoundrel and one beyond redemption.[134]

[77] In regard to my appearance, men of Athens, and my fast pace of walking and loud, chattering voice, I don't count myself among those blessed by nature[135]—for insofar as I offend peo-

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[131] Phormion's sons are, like Apollodorus, sons of Archippe and so as "half-brothers to Apollodorus" are "uncles" to his daughters. Since Apollodorus has no sons, these daughters are *epiklēroi* ("heiresses"; for the procedure of claiming an *epiklēros*, see the Introduction to this volume, IV.2.b).

[132] Apollodorus here rather fantastically accuses Phormion of ignoring the law that regulated the marriage of poor *epiklēroi* (the law is cited at Dem. 43.54). His nephews will refuse to marry his daughters because of their poverty, and Phormion will not supply a dowry for them to marry outside the family.

[133] That precise account was given in Dem. 36.36–41.

[134] The speaker of Dem. 36 depicted Apollodorus as a prodigal and lavish spender (36.8.45, and 52). Cf. 45.77.

[135] Similar phraseology is used in Dem. 37.52 (opprobrium for fast walking and loud talking) and 37.55 (the injustice of such opprobrium). The parallels in the passages suggest that Demosthenes was the author of both speeches. "Fast walking" may have been associated with slaves, who would

ple without any benefit to myself, I am at a disadvantage in many places; nevertheless, because I'm moderate in all personal expenditures, I could be thought of as living a more well ordered life than Phormion and others like him. [78] Whatever services concern the city, however, and all those that concern you, I carry out, as you know, with as much splendor as I can.[136] For I'm not unaware that for you who are citizens by birth it's sufficient to carry out your public duties as the laws enjoin, but for those of us who are made citizens by decree it's appropriate to be seen carrying out these duties as men who are returning a favor.[137] [*To Phormion*] Do not criticize me, then, for what I should rightly win your praise.

[79] But tell me, Phormion, whom of the citizens have I hired—as you have—for pleasurable company?[138] Show me. Whom have I deprived of the rights of citizenship in this city—rights that I was deemed worthy to possess—and of the right of speaking freely in it—as you deprived the man whom you dishonored?[139] Whose wife have I seduced—as you have seduced many—[*to the*

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have to "run" to carry out orders; at any rate, that is the way they are depicted in New Comedy.

[136]Apollodorus served as trierarch in 368/7, in 365/4? (*IG* II² 1609), and again in 362/1; he served as *syntrierarch* in 356/5 on the ship Phosphoros (*IG* II² 1612, line 110) and was victorious *chorēgos* in 352/1 in the boys' dithyramb at the Dionysia (*IG* II² 3039). See Trevett 1992: 10–14 with nn. 17, 20, and 30.

[137]In another speech of Apollodorus, he calls himself a "citizen by decree" (Dem. 53.18). The decree for Pasion (380s) bestowed citizenship on himself and his descendants. Since Apollodorus was already born (and probably a minor at that time), the decree covered him as well.

[138]I.e., for the purpose of (male) prostitution.

[139]It was an offense for a male citizen, who had hired himself out as a prostitute, to address the Assembly. Any citizen could denounce such an "offender" publicly and call for a "scrutiny of public speakers" (*dokimasia rhetorōn*). If the "offender" were condemned in the subsequent courtroom trial, he would be penalized with *atimia*, the loss of his civic rights that would include the right to speak in public. See Aes. 1.28–32, 64, 81, 134, 180; Dem. 19.257, 284; and for the procedure, MacDowell 2005. We do not know to whom Apollodorus is referring here.

judges] including the woman for whom this villainous fellow built a monument next to his wife's at a cost of more than two talents?[140] And he didn't perceive that such a costly building would be a memorial *not* of her burial but of the wrong she had committed against her husband because of him! **[80]** [*To Phormion*] Then, after doing such things as these and after having produced so many testimonies of your own insolence, you presume to review the conduct of another man's life! By day you are a temperate man; at night you compass acts for which the penalty is death.[141] This fellow, men of Athens, is a scoundrel and a rogue, ever since he left the temple of Castor and Pollux.[142] And here is proof: if he had been honest, he would have managed his master's business and remained a poor man. But as it is, having gained control of such a vast amount of money that he could steal from it unobserved all that he now has in his keeping, he thinks of himself not as being in debt for that sum but rather as inheriting it! **[81]** [*To Phormion*] And yet, by the gods, if I had arrested you as a thief caught in the act and had piled the property that you possess—if somehow that were possible—upon you,[143] and then had asked you, in case you denied having filched the stuff, to name the person from whom you got it, whom would you have said was the donor?[144] For your father didn't leave it to you, nor did

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[140]The speaker of Dem. 36.45 had complained that Apollodorus was extravagant with mistresses; Apollodorus gives tit for tat.

[141]Apollodorus insinuates that Phormion seduces citizen women at night; if caught in the act doing so, he could be put to death.

[142]The temple is called the "Anakeion" in the Greek manuscripts, i.e., the temple of the *Anakes* or "lords," namely, the Dioscuri (Castor and Pollux). There is no need to emend the text to *Anakion* (*pace* Dilts 2009) to conform with *IG* II^2 1400, line 44; for vacillation in the spelling (*ki-*, *kei-*) of inscribed texts, see Threatte 1996: 114.

[143]Possibly, as Gernet 1957: 177 suggests, this may have been a traditional practice to publicize the ignominy of the thief caught in the act.

[144]Cf. Dem. 36.43: "As for his [Phormion's] 'affluence' and his acquiring it from your father's property, and the questions you said you'd ask about where Phormion has acquired his property, you're [Apollodorus] the one person in the world who can't talk about that" (trans. MacDowell 2004). Again, tit for tat.

you find it, nor did you acquire it elsewhere and then come to our family with it. For you were bought as a barbarian. Then did you, a man who deserved a public execution for all your activities, after you saved your neck and acquired a city for yourself from our private means, and after you were esteemed worthy to create children as brothers to your master, did you enter a special plea that our suit for recovering money was not admissible? [**82**] And then did you speak ill of us and minutely examine the sort of man our father was?[145] Who would not have found this intolerable, men of Athens? As for me, if I ought to be less proud than all the rest of you, I think I should at least be prouder than Phormion, and if in Phormion's case he ought to be less proud than any single person, assuredly he should be less proud than I. For even if we are the sort of people whom your descriptions would have us be, nevertheless, you were our slave.

[**83**] Well, perhaps one of them might add this, that Pasicles, although he's my brother, doesn't make any of the same charges against Phormion. Now I, men of Athens, indeed, where Pasicles is concerned (although I beg and crave your pardon—inasmuch as I've been treated outrageously by my own slaves and now have reached the limit of self-restraint—if I speak out and reveal matters that until now I pretended not even to hear when others were speaking) . . . ,[146] [**84**] for while I believe that Pasicles is my brother born of the same mother as I was, as for his father—I don't know, but I fear that Pasicles may be the first of Phormion's wrongs committed against our family.[147] For when he acts as an advocate for the slave and dishonors his brother, and when he fawns upon and admires men who ought to be admiring him, what justifiable suspicion do these circumstances arouse?

Take Pasicles away, then, please, and let him be called your

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[145]In Dem. 36.43–47, Phormion's advocate had mentioned Pasion's slave background a number of times and then called for witnesses to attest that he had belonged to Archestratus (36.48).

[146]The sentence is somewhat difficult; I have followed Paley and Sandys (1896: 123), who suggest that the speaker "was going to say . . . ['I indeed about Pasicles . . . shall speak'], but he lost himself, as it were, in the maze of the intervening clauses."

[147]Scandalous innuendo; cf. 45.3.

son instead of your master, and my opponent (for that's what he wants) instead of my brother.

[**85**] So I bid this fellow farewell and turn to those men whom my father handed on to me as helpers and friends, to you, oh judges. I ask and beg and entreat you, not to turn a blind eye on me and my daughters now so that we become, through poverty, a source of malignant joy to my slaves and this fellow's toadies. My father gave you a thousand shields and often made himself useful to you: he voluntarily contributed five triremes and manned them from his own resources and served as trierarch on these occasions.[148] I mention these matters not in the belief that you owe me a favor (for it's we who are indebted to you) but that you may be aware that they are treating me undeservedly; for that would not be fair to you either.

[**86**] Although I have much to say about the outrages inflicted on me, I see that the water is insufficient. Therefore, I'll tell you how I think you all would best form a notion of the enormity of the wrongs I have suffered: just think to yourself of some servant you left behind at home, and then imagine yourself treated by him as I have been by Phormion. It doesn't matter if yours is "Syrus" or "Manes" or whatever name each has, while this fellow is "Phormion." No, the circumstances are the same: they are

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[148]Pasion's public generosity was no doubt responsible for the award of citizenship; unfortunately, (1) neither the dates of the gifts mentioned here nor of his citizenship can be pinned down. Furthermore, (2) it is debated whether metics could serve as trierarch (cf. 21.163), but if Pasion was rewarded for trierarchic service, that would settle the question of the date. The triremes may have been contributed during the Corinthian War, which ended in 386, or after war broke out between Athens and Sparta in 377. (3) A naval inscription (374–362?) mentions two anchors contributed by Pasion (*IG* II² 1609, lines 85–86). (4) The cost of the "gifts" cannot be precisely adduced; Trevett conjectures at least 9½ talents for the five triremes and their crews, and a larger figure for equipping them; the shields could have cost ca. 3 talents, 2000 drachmas to buy but a lower figure at cost price. For summation and critique of earlier scholarly views on these interesting questions, see Trevett 1992: regarding (1) pp. 21–24, n. 9; (2) p. 22, n. 9; (3) pp. 36–38, n. 20; and (4) pp. 24–25, n. 10 and pp. 39–41, n. 23.

slaves and this fellow was a slave; you are masters and I was master. [87] Whatever satisfaction, then, each of you would claim, regard it right that I too claim it now. And as for the man who robbed me of that satisfaction by giving false testimony, in the interest of the laws and the oath you've all sworn, deliver your verdict, punish him and make him an example to others; keep in mind everything you've heard from us and be on guard if they should try to lead you astray, meeting every point in their argument. If they deny they have witnessed everything [in their depositions, ask,] "Why then are they written in the document? Why then didn't you have them erased at that time? What is the defendant's written response[149] that is now in the keeping of the magistrates?" [88] If they say they have testified—the one that he was a ward under the terms of the "will," another that he was the guardian, and another that he has that "will" in his keeping—[ask,] "What 'will'? What provisions have been written in it?" Ask these questions. For as to what these men have testified, none of them has corroborated the evidence of another. If they wail, consider that the person who suffered deserves more pity than the persons who must pay the penalty. For if you do this, you will grant redress to me, and you will restrain the abject flattery of these men, and you yourselves will have voted true to your oath.

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[149]For Stephanus' "written response," see 45.46n.

46. AGAINST STEPHANUS II

INTRODUCTION

Speech 46 is the second speech for the plaintiff Apollodorus in the false-witnessing case against Stephanus.[1] In many private lawsuits, each party was allowed to speak twice. The order of speakers would be plaintiff followed by defendant, and then plaintiff and defendant once again; speeches were shorter in the second round.[2] Since the defendant will have spoken directly after the plaintiff, the latter, in his second speech, might have to respond extemporaneously to unexpected arguments or data presented by the defendant. The plaintiff, however, may have devised his second speech in advance, trying to second guess the arguments of the defendant on the basis of the preliminary hearing and then have made ex tempore adjustments and additions as he spoke, or,

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[1] Readers should consult the Introduction to Speech 45 for the background of the case, the individuals involved, and the testimony impugned by Apollodorus.

[2] The time allowed for speeches was determined by the type of lawsuit and value of the claim sought by the plaintiff (see the Introduction to this volume, n. 45, regarding the time permitted for speeches in a *diadikasia*). Plaintiffs such as Apollodorus seeking over five thousand drachmas in private cases (*dikai*) were allowed ten *choes* ("pitchers" of water) for the first speech and three for the second, so thirty minutes (if one *chous* = three minutes) for the first speech and nine minutes for the second; and the same for the defendant (*Ath. Pol.* 67.2). It is not known for certain how widespread the use of "second speeches" was (see Harrison 1971: 160–161 for discussion).

if he had confidence in his abilities, he may have extemporized the entire speech.

Elsewhere in the corpus of speeches for private lawsuits, we have both the first and second speeches for the same trial only in Demosthenes' prosecution of Aphobus for the maladministration of his guardianship (Dem. 27 and 28) and in his prosecution, a few years later, of Onetor for ejectment (Dem. 30 and 31). Demosthenes had composed and delivered the first and second speeches for both those trials; that the second speech in the later trial appears somewhat unfinished suggests that it may have served as a "script" for improvisation during the second round.[3] In the case against Stephanus, Demosthenes probably wrote the first speech and Apollodorus the second;[4] Apollodorus probably delivered both of them.

If Apollodorus extemporized any new argument in response to a surprising admission from the defendant, he may have incorporated little of it into the version of the speech transmitted to us. He appears to have consulted a copy of Demosthenes' speech while composing his own. He once again argues that Stephanus' testimony regarding the challenge tendered by Phormion is false. In particular, he contends that the document he was challenged to identify as "a copy of the will of Pasion" and that was so designated by the witness and submitted into evidence was *not* a copy of Pasion's will because Pasion had not made one. He begins by remarking that he could have predicted the main line of defense (a sure sign of a composition written at home and not extemporized), that Stephanus would say he had not testified to "all the items written in the document" (46.1). He then duplicates argu-

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[3]MacDowell 2004: 40 suggests that in the trial against Aphobus, Demosthenes, because of his inexperience, may have prepared in advance some material for the second speech; later, when he published it, he included passages he had added in during the trial in response to the defendant's speech. On the other hand, MacDowell (2004: 79–80) suggests that Demosthenes may have extemporized more in the second speech against Onetor (Dem. 31).

[4]For the authorship of 45, see the Introduction to that speech; for the authorship of 46, see below, n. 10.

ments from the earlier speech, that Stephanus cannot say he attested the challenge but *not* the deposition in which the challenge was reported and that Stephanus cannot prove that Pasion wrote the will or that he was present when Pasion drafted or opened it (cf. 46.1 and 45.43; 46.2–5 and 45.17–23). Apollodorus now has worked himself up to provide his best arguments, those for which he can supply law after law (ten all together) to show not only that Stephanus has acted unlawfully but that Phormion (who is not on trial) has done so as well.[5] This, we may presume, is Apollodorus' original contribution to the speech, and while most or all of it is irrelevant to the case, some of the laws, especially the one on adoption, are of interest in themselves.[6]

Apollodorus' Argument: Laws and Probability

Apollodorus first attacks Stephanus' testimony on procedural grounds: Stephanus has given testimony contrary to a number of laws. By presenting evidence solely on the basis of Phormion's assertions, Stephanus has contravened the law (*No. 1*) that permits hearsay evidence only in the case of testimony from dead men and witnesses unable to attend trial (46.8). Phormion, for his part, by using Stephanus as his personal mouthpiece has contravened the law (*No. 2*) that prohibits litigants from testifying in their own cause (46.10: the law is obviously irrelevant to the case). Stephanus has also contravened the law (*No. 3*) that prohibits a witness from giving testimony contrary to the law (i.e., contrary to the formal rules of evidence?) and that also makes the person providing such a witness liable for the same reason (see 46.10n). Moreover, the material on which the evidence was written (a whitened board, painted with letters at home, instead of a

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[5]The exhibiting of laws is a favorite technique in Apollodoran speeches; the technique was also used in Speech 43 (which was composed neither by Apollodorus nor by Demosthenes). To see the difference between a speechwriter who has mastered the technique and one who has not, compare Hyperides 3 *Against Athenogenes* with this speech.

[6]The authenticity of the various laws is discussed in the notes to the speech.

wax tablet scratched in on the spot) shows the falseness of the testimony (46.11). Apollodorus' weak argument in this instance is based not on the law but rather on probability and expands unwarrantedly a remark about written testimony at 45.44.

Next, Apollodorus delivers a double-pronged attack on the authenticity of the will: it contains unlawful provisions (and Pasion would never have written such provisions). Moreover, Pasion had no lawful authority to compose a will (and therefore did not). The attack on the will is relevant to the case insofar as it replicates an argument from the first speech, that Stephanus attested the will's *authenticity* when he said that the document Apollodorus was challenged to open was a copy of Pasion's will. He then quotes the law (*No. 4*) that makes it unlawful "to enact a law applying to an individual unless the same law applies to all Athenians" (46.12). He tries to exploit this law (or so it seems) in regard to a clause in the alleged will of Pasion by which Apollodorus' mother Archippe was betrothed (lit. "pledged") to Phormion (see 46.13n): Pasion would not have provided a "mixed marriage" for his wife, which would have created legal disabilities for children born during it; the laws apply to all citizens, and Pasion was a citizen and had not been granted a special dispensation for children as yet unborn from Archippe's marriage to Phormion, who was a noncitizen at the time of Pasion's death; since Pasion would not have made a will with such a provision, it must be fraudulent. Apollodorus will eventually return to this argument but first delivers the second prong of his attack on the will.

To this end, he introduces a law (*No. 5*) that is important for social historians of Athens: it articulates certain categories of persons who are not permitted "to dispose of their own property" (46.14), which is another way of saying they were not permitted "to draw up a will."[7] Although defining exceptions, the law basically refused the right to make a will to men who themselves had been adopted (whether all categories of adoptees or only some is controversial) and to men who had legitimate sons (but see

[7]The law is also sometimes referred to as a law on adoption since "disposing of one's property" includes the adoption of a son as heir.

46.15n). Those not included in these categories could dispose of their property, provided they were not insane or senile or drugged or ill or under the influence of a woman.[8] Apollodorus uses this law in three ways to show that Pasion had no authority to draw up a will or else that he would not have drawn up a will that read like this one; in either case, we are to infer that Pasion did not draw up a will. First, Pasion himself was adopted—by the People as a citizen (Gernet 1957: 183: "Inutile d' insister"); second, he had legitimate sons (but see 46.15n); and third, the inconsistency of the terms of the lease of the bank—also a forged document, according to Apollodorus—with the terms of the will would seem to indicate that Pasion was senile or insane.[9]

Apollodorus next makes an extended argument that his father could not have produced a will with unlawful clauses such as the one by which Archippe had been betrothed to the noncitizen Phormion; since she was an *epiklēros* ("heiress"), Phormion's "marriage" to her was invalid. First, he "proves" that his mother was an *epiklēros* by citing a law (*No. 6*) that regulated the persons who were authorized to conclude the "pledging" of a woman for marriage (46.18). Since none of these kinsmen gave testimony for his opponent, then none of Archippe's kinsmen pledged her; therefore, she must have been an *epiklēros* when she married Phormion. The argument is ludicrous but he builds upon it nevertheless, now citing a law (*No. 7*) that gives control of the property of an *epiklēros* to her son, once he has passed the age of puberty (46.20). Apollodorus uses this law (illegitimately) to suggest that he was

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[8]The categories of men articulated by the law are notoriously difficult to define; the Athenians themselves found it obscure. *Ath. Pol.* 35.2 reports that when the Thirty took control of Athens (404/3), "they annulled the laws of Solon which provided scope for disagreement. For instance, in the matter of a man's bequeathing his property to whomever he likes, the Thirty gave the testator full and absolute power and removed the attached difficulties ('except when he is insane or senile, or under the influence of a woman'), so that there should be no way in for malicious prosecutors" (trans. Rhodes). See 46.14n.

[9]See 46.17n.

his mother's legal guardian but had been robbed of his chance to prevent his mother's marriage (or to give her away) since he was serving as trierarch at the time (see 46.20nn). He adduces still another law (*No. 8*) regarding *epiklēroi*: that the Archon is to oversee the adjudication of estates and *epiklēroi* (46.22). Since Phormion had not claimed Apollodorus' mother via an adjudication hearing before the Archon, the "marriage" is invalid. Apollodorus leaves the judges to draw the farfetched inference: since Phormion could only have married Archippe if he had been awarded her by the court, Apollodorus' father would never have pledged her to him; he would have had to adopt him first in the very same will, which of course he could not lawfully do, because he had sons already (and had been "adopted" by the People as well). Perhaps in case any judge had not drawn the full inference, he cited the very next law (*No. 9*) to settle the matter once and for all: if a father has made a will while he has legitimate sons alive and if those sons die before reaching manhood, the will is to be valid. Clearly, since the sons are alive, the will that Apollodorus' opponents claim is his father's must be invalid (even in the fanciful case that he had adopted Phormion to be the husband of his *epiklēros*-wife!).

Now that Apollodorus has "proven" the inauthenticity of the will by his cornucopia of irrelevant laws, he rallies to a penultimate drubbing of his opponent for contriving testimony, giving false testimony, stealing documents that contain true testimony, deceiving the judges, and conspiring against the interests of justice (46.25). He plunks down a final law (*No. 10*) that provides indictments against those who conspire or bribe the Heliaia or any of the courts of Athens or the Council or accept money as an advocate (see 46.26nn). A request for the judges' verdict in accordance with the laws follows.

One might think or wish this were the end; alas, Apollodorus adds one last argument: while men customarily make copies of contracts, they do not make copies of wills. The allegation is not true (see 46.28n) but may have accorded with the experiences of judges (perhaps a great many of whom had never yet contemplated writing a will). Possibly he added the argument extemporaneously during the trial and added it later to his published version.

The Authorship of the Speech

Apollodorus delivered both speeches. Although he was not the author of the first one (see the Introduction to Dem. 45), many scholars think he may have been the author of this "meager and lifeless" speech.[10] Indeed, studies of different aspects of style indicate that Speech 46 is akin to a group of speeches tucked into the Demosthenic corpus, all pleaded by Apollodorus in various prosecutions, and all now generally ascribed to Apollodorus' authorship.[11]

AGAINST STEPHANUS II, CHARGED WITH FALSE TESTIMONY

[1] That this Stephanus here would not be at a loss to come up with a defense for his testimony and that he would deceive and lead you astray by arguing that he hasn't testified to all the items written in the document, even I, judges, could easily predict.[12] For he's a rogue, and there are many men who are writing and giving advice on Phormion's behalf. Moreover, it's natural for men, as soon as they undertake to give false testimony, to plan their defense immediately. [2] But for my sake, please keep in mind that in the course of so long a speech, he at no point furnished witnesses to say either that he himself was anywhere nearby when my father was drawing up this "will" so as to know it's a copy of the one my father made or that he himself saw the document opened that they maintain my father wrote and left behind. [3] Yet surely when he has testified that the contents of the document are a copy of "Pasion's will" but can't prove that my father wrote that will or that he himself saw it and was present

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[10] Paley and Sandys 1896: xlv, echoed by many others; one need not be a grand scholar to perceive this.

[11] The speeches are Dem. 49, 50, 52, 53, 59; see Trevett 1992: 50–76. A minority hold that these speeches, while written by the same man, were not written by Apollodorus (see Blass).

[12] Cf. Dem. 45.43–44 and 87, where Apollodorus hinted at this line of argument.

when my father was drawing it up, isn't this conspicuous proof that he has given false testimony?[13]

[4] Moreover, if he says it was a challenge and not a deposition, he's lying.[14] For all evidence that opposing litigants furnish to the court when they issue challenges to one another they furnish through the depositions of witnesses. For you wouldn't know whether the allegations of one or the other side were true or false, unless witnesses were also furnished. And whenever witnesses are furnished, you have confidence in them since they are accountable for their testimony, and you vote whatever seems right on the basis of what was spoken and deposed. [5] I therefore want to demonstrate that the deposition is not [simply] a challenge and that they ought to have testified—supposing a challenge really materialized—as in fact one did not—as follows:[15] "They testify that they were present before the arbitrator Teisias when Phormion challenged Apollodorus to open the document that Amphias, the brother-in-law of Cephisophon, furnished but that Apollodorus refused to open it."[16] If they had testified in this way, they would have appeared to testify truthfully. But to testify that the contents of the document that Phormion furnished was a copy of "Pasion's will" without having been present when Pasion was drawing it up or knowing whether he did draw it up—doesn't their impudence seem to you transparent?

[6] Yet surely if he says he believes these statements were true

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[13]The same argument appears at Dem. 45.17–23.

[14]See Dem. 45.43, where Apollodorus says that Stephanus will claim that he is accountable not for the details of the deposition (which included the contents of both the challenge and the will) but only for facts relevant to the challenge: whether Phormion had issued the challenge and whether Apollodorus had accepted. The disputed testimony is cited in 45.8 and paraphrased in 45.10.

[15]Cf. Dem. 45.25. See the Introduction to Dem. 45 at nn. 23–26.

[16]Compare the testimony inserted at 45.8; the witnesses had testified that they were present when Phormion challenged Apollodorus: "If he denies that the document that Phormion put into the *echinos* is a copy of Pasion's will, then he should open *the will of Pasion*, which Amphias the brother-in-law of Cephisophon furnished for the arbitrator."

since Phormion made them, then it's a case of the same man not only believing the fellow who is his source of information but also testifying at that fellow's bidding. Yet the laws do not so stipulate but instead enjoin that a man is to testify to what he knows and to events at which he was present and that these details are to be written on a tablet so that it's impossible to add or subtract anything to what has been recorded.[17] [7] And the laws do not permit a witness to testify to the hearsay statements of a living man but only to those of a dead man, and also to the absentee testimony of those who are incapacitated or abroad, provided that it has been written on the tablet. And the testimony of both the witness who appears in court and of the one who is absent can be subjected to litigation through the same procedure of objection (*episkēpsis*), so that if the absentee witness acknowledges the testimony, he is liable to a suit for giving false testimony, and if he doesn't acknowledge it, then the witnesses to the absentee testimony who appear in court are liable.[18] [8] Now since Stephanus neither knew whether my father left behind a will nor was ever present when my father was drawing up one, but only heard so from Phormion, he has testified to hearsay evidence both falsely and unlawfully.[19] And to prove that I'm telling the truth, the secretary shall read you the text of the law.[20]

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[17]See below, 46.11n.

[18]When an "absentee witness" gives testimony outside of court, he writes it down, and another set of witnesses are present in court to testify and confirm that the deposition was in fact given by the absentee witness. See esp. Dem. 35.20 and 33–34 and also Is. 3.18–27 for discussion of appropriate witnesses for an absentee witness and an example of an absentee witness who refused to acknowledge the testimony ascribed to him.

[19]Arguments against using hearsay evidence appear in Dem. 44.55 and 57.4.

[20]A provision such as this surely appeared in Athenian legislation that regulated witness testimony; the prohibition of hearsay evidence is mentioned at Dem. 57.4; the exception that allowed it in the case of the dead is mentioned at Dem. 44.55, and provisions regarding testimony from absentee witnesses (whether sick or abroad) are depicted at Is. 3.20–21. Whether

[LAW]

It is permissible to testify to the hearsay evidence of a dead man and to the testimony of a witness who is abroad or incapacitated.

[9] Now I want to show you that he has borne witness contrary to another law as well, so that you may know that Phormion, as he has no means of escape from the terrible wrongs he committed, used the challenge as a smoke screen; in fact, he has himself testified in his own cause by putting these men forward as a cover for himself.[21] In this way the judges were deceived, for they thought the witnesses were testifying truthfully and so I was defrauded of the property my father left me and of the chance to exact a penalty for the wrongs I'm suffering. For the laws do not allow a man to testify in his own cause in any suit, whether public [*graphē*] or private [*dikē*] or during an audit [*euthynai*].[22] But Phormion has given testimony for himself when these men say they have testified on the basis of what they heard from him. [10] [*To the secretary*] So that you may know the precise wording, please read the law itself.[23]

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the particular provision regarding hearsay evidence took the form in which it appears here cannot be determined; certainly it is abridged.

[21]Apollodorus argues that Phormion's use of witnesses to the challenge to Apollodorus to open the will as a means to introduce the will as if it were an authentic document and hence to obfuscate its counterfeit origin amounts to Phormion's acting as a witness in his own case, which was not allowed in Athenian law (see the law in 46.10).

[22]Cf. Dem. 40.58.

[23]A provision such as this probably appeared in Athenian legislation but may have been more detailed; whether the precise terms here appeared in the lawcode is impossible to determine. The fact that cross-questioning is not mentioned in the speaker's paraphrase suggests authenticity. Litigants might write up depositions for their own witnesses to confirm or deny, and they might put into evidence their own challenges to their opponents, but they cannot confirm their own statements with their own depositions during cross-questioning. That questions must be answered during the prelimi-

[LAW]

It is compulsory for the two opposing litigants to answer each other's questions, but they are not to testify.

Now consider this law here that prescribes that witnesses are liable to suits for false witnessing for this reason by itself, that he testifies contrary to the law.[24]

[LAW]

And the witness is also to be liable to a suit for false testimony for this reason alone, because he gives testimony contrary to the law. Also the one who brought forward the witness [is liable] for the same reason.

[11] Furthermore, even from the tablet on which the deposition has been written, anyone can tell that Stephanus has testified falsely: it has been whitened and prepared at home. But the proper method is this: witnesses to past events should confirm depositions prepared at home, but witnesses to challenges who stand forward on the spot should confirm a deposition that has

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nary hearing (*anakrisis*) is said to be "in accordance with the law" at Is. 6.12. The latter provision applied equally to the trial, as at Lys. 12.24–25, 13.30–32, 22.5, and Is. 11.4.

[24]The law is possibly corrupt and abridged; whether it has been entirely fabricated by (e.g.) a late grammarian is indeterminable. A clause in the first sentence ("for this reason alone") differs slightly from the speaker's paraphrase ("this reason by itself"); the similar words in the law could have appeared in it or have been introduced into it by a later copyist. The phrase "contrary to law" may sound vague but is corroborated at Dem. 47.1 and may have had a more detailed context in the full provision. Gernet 1957: 182 accepts the genuineness of the provision, finding it of interest that false testimony is not only that which is fabricated but also that which contravenes the formal rules of evidence. The person who produces the witness is liable to a suit for *suborning* false testimony (*dikē kakotechniōn*: Dem. 47.1 and 49.56), not to a suit for *giving* false testimony.

been written on a waxen tablet so that if he wishes to add or erase anything, it's easier to do so.[25]

[12] For all these reasons, then, Stephanus is proven to have testified falsely and contrary to the law. But I want to demonstrate to you this as well, that neither did my father draw up any will nor do the laws permit such a thing. For if anyone should ask you, according to what kind of laws ought we to live as citizens, clearly you would answer "the established laws." But surely the laws have a prohibition: "It shall not be permissible to enact a law applying to an individual unless the same law applies to all Athenians."[26] [13] This law, then, enjoins us to live as citizens under the same laws and not for some to live under one law and others under another. My father died during the archonship of Dysnicetus,[27] and Phormion became an Athenian citizen during the archonship of Nicophemus, in the tenth year after my father's death.[28] How then could my father, unaware that Phormion would be made an Athenian, have given him his own wife, thereby insulting our family and disdaining the gift you gave him and overlooking the laws?[29] Tell me, would it have been better for

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[25]Apollodorus draws a distinction between a whitened surface upon which letters could be painted with a black pigment and a waxed tablet on which letters might be scratched with a point like a Roman *stilus*. According to Apollodorus, the painting of the letters on the whitened surface requires more leisure and is suitable for a litigant sitting at home and drafting testimony for witnesses of events that took place in the past. A wax tablet, on the other hand, permits mistakes to be scratched out and is suitable for writing up the testimony of a witness "on the spot," e.g., a witness to a challenge that takes place before the arbitrator, for which the deposition would have to be produced at that very moment, so that it could be included among the documents sealed up for use at the trial. Cf. Dem. 45.44n.

[26]Variants of this law are cited at And. 1.87; Dem. 23.86, 24.59.

[27]370/69.

[28]361/0.

[29]If Archippe were a citizen, her marriage to Phormion (a former slave and still a metic in 368/7, the probable date of the marriage) would have produced children who would not have been allowed full civic rights (see

my father to do all this while alive—supposing that really was his plan—or to leave behind him at his death a will that he had no authority to make? [**14**] No, surely if you hear the laws themselves you'll know that Pasion had no authority to draw up a will. [*To the secretary*] Read the law.[30]

[LAW]

Everyone who had not been adopted[31] when Solon entered on his archonship in such a way that he could neither renounce nor claim the inheritance is permitted to dispose of his own property, however he wishes,[32] provided he has no legitimate sons, unless he is mad due to old age or drugs or illness, or un-

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45.28n and the Introduction to this speech on "law No. 4"). If she were a metic, Apollodorus might still pretend to the judges that she was a citizen, in order to arouse their indignation. The gift Pasion would be disdaining is citizenship.

[30]Although the law appears to be abridged (esp. at the beginning) and may have suffered corruption in transmission, many of its clauses may be authentic on the grounds of (1) similarity to paraphrases elsewhere (e.g., Is. 1.11; 2.13; 3.1; 4.14 and 16; 6.9, 21, and 28; 9.11, 13, 37; 10.2; Hyp. *Athen.* 17) and (2) the uniqueness of the clause "in such a way that he could neither renounce . . ." The same law may have been cited (but is not preserved) at Is. 6.9, where there is no allusion to adoptions. For the opening clause, see 44.68. Regarding difficulties of interpretation felt by Athenians, see the Speech Introduction, n. 8.

[31]For a speculative and interesting discussion of the evolution of wills and adoption before the classical period, see Humphreys 2002, with reference to this law at pp. 340–341.

[32]The right "to dispose of one's property" (*ta heautou diathesthai*) probably means here "to compose a will" and so includes the right, already in existence when the law was instituted, "to adopt" (see 24n). There is little agreement regarding the mind-bending opening of the law. For a summary of different interpretations of the categories of exempt adopted men, see Harrison 1968: 84–87.

der the influence of a woman, *being deranged by any of these causes*, or is constrained by need or actual fetters.[33]

[15] Well then, you have heard the law that forbids a man to dispose of his property by will if he has legitimate sons.[34] And while these men say my father did dispose of his property in this manner, they cannot show they were present at the time. It's also worth considering that the law grants the right to all men *who had not been adopted* but were born legitimately to dispose of their own property, provided they are childless. Now my father *was* adopted—by the People as a citizen—so that for this reason, too, he was not permitted to draw up a will,[35] especially in regard to his wife, of whom he wasn't even legal guardian,[36] and besides that, he had sons. [16] Consider, too, that even if a man is childless, he has no right to dispose of his own property unless

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[33]Alan Boegehold has suggested to me that the words italicized here may be a gloss that has slipped into the text. The words translated here as "he is mad" is a participle in the Greek text, rather than a noun.

[34]There is room for maneuver beyond Apollodorus' strict interpretation of the law: Pasion, though having legitimate sons, may have been debarred not from making a will but only from disposing of his property in any way he liked; nothing appears to debar him from handing on the property to his sons through a will. Wills made by Athenians with legitimate sons are discussed by Wyse 1904: 515 (with many examples); Harrison 1968: 151–152; and Rubinstein 1993: 83–86.

[35]The argument is usually considered specious: Apollodorus tries to maintain that his father had been adopted (and so unable to make a will) because he had been "adopted" as a citizen; for an eccentric view, see Harrison 1968: 86 n. 2. The term "to be adopted" (*poieisthai*, here passive) can also mean "to be made a citizen by decree."

[36]It is difficult to see why Pasion would not have been the legal guardian of his wife. In 46.19, Apollodorus will argue that his mother was an *epiklēros* (see Dem. 45.18n), and in 46.20, he will claim that the sons of *epiklēroi*, once they are two years past puberty, become the guardians of their mothers (see 46.18n and 23n). His argument here is not clear; he seems to insinuate that Pasion could not dispose of his wife in his will because he himself (Apollodorus) was her legal guardian.

he is of sound mind, but if he is ill or taking drugs or under the influence of a woman or constrained by old age or by madness or some need, the laws say he does not have the right. Consider, then, whether the will, which these men claim my father wrote, seems to you to be that of a man of sound mind. [17] Taking only the lease as an example, consider whether it seems consistent for my father to refuse Phormion permission to engage in the business on his own without our consent but then to give him his own wife and to have allowed Phormion a partnership with himself in the production of children.[37] And don't be surprised that when they were fabricating all the rest of the terms in the lease, they overlooked this point. Perhaps they were giving their attention to nothing else but making off with the property and registering my father as a debtor. And then they didn't think that I would be clever enough to examine these matters so carefully.

[18] Now, then, consider also the laws that regulate the persons from whom betrothals are to be concluded[38] so that you may know from them also that this fellow Stephanus has been a false witness to a fabricated will.[39]

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[37]Apollodorus' argument here is that, if the will is genuine, then Pasion could not have been of sound mind when he composed it (which cancels the validity of the will) because the will and the lease have contradictory goals: the lease prevents Phormion from running the business on his own without the consent of Pasion's children, yet the will goes so far as to make Phormion a partner with Pasion in the production of children by giving him Pasion's wife. Nevertheless, Pasion was of sound mind and could not have written so illogical a will; therefore, he did not write it and the will is a forgery. This is hardly cogent.

[38]For betrothal or "pledging," see the Introduction to this volume, nn. 17–21.

[39]Some such law existed in Athens; if this version is authentic, it has suffered corruption in transmission, especially in the second half. The first part naming the kinsmen who betroth (lit., "pledge") non-*epiklēroi* is confirmed by 44.49 and Hyper. *Athen*. 16; the phrasing of the beginning of the second sentence (lit., "if there be no one of these") is almost exactly the same as that used in the homicide law of Dracon (*IG* I^3 104, line 16). It should be

[LAW]

If a father or brother born of the same father or grandfather on the father's side betroths any woman on just terms, her children are legitimate. But if none of these kinsmen is alive, if she is an *epiklēros*,[40] her legal guardian is to take her in marriage,[41] and if she is not an *epiklēros*, the person to whom <her father?> entrusts her is to be guardian.[42]

[19] Well then, you have now heard whom this law designates as legal guardians. That none of these acted for my mother, my opponents have themselves given testimony—for if there had been a guardian, they would have produced him as a witness.[43] Or do you think they would have presented false witnesses and a will that doesn't exist but would not have presented a brother or grandfather or father if indeed one could be had for the money? So, since it's manifest that none of these was alive, my mother *must* have been an *epiklēros* at that time.[44] Now consider

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noted that *epiklēroi* are not "betrothed" (i.e., they are not subject to *engyē*); they are *awarded* to a husband through the procedure of *epidikasia*.

[40]A woman becomes an *epiklēros* when her father dies, and, in the absence of brothers, she inherits the estate; see the Introduction to this volume, IV.2.b.

[41]Harrison 1968: 19 and 110 suggests that the hearing (*epidikasia*) that identified a claimant as nearest kinsman not only awarded him the *epiklēros* but also appointed him as *kyrios* or "legal guardian" of the *epiklēros* (see 46.23n, which might offer corroboration).

[42]The words "her father" do not appear in the manuscripts; Gernet 1957: 184 n. 1 and 191 n. 2 suggests they have dropped out by scribal error.

[43]Apollodorus is presumably referring to witnesses in the *paragraphē* trial who deposed to the will (Dem. 36.7). It is not clear why he should expect that someone who allegedly acted for his mother in 370/69 when his father died or in 368 when she married, would be alive in 351/0.

[44]Apollodorus has given no proof that his mother was an *epiklēros*, neither in this speech nor in any extant one; if someone other than a kinsman gave her away, it may have been that no kinsmen were in Athens at the time

whom the laws direct to be guardians of the *epiklēros*. [**20**] Read the law.[45]

[LAW]

If a son is born from an *epiklēros*, as soon as he is two years past puberty,[46] he is to take control of the property and to measure out the grain for his mother.

The law, then, bids that sons who are past puberty are to be guardians of their mother, and they are to measure out food to her.[47] But it's clear that I was on a military campaign and serving you as trierarch when this fellow was marrying my mother.[48] [**21**] [*To the secretary*] But just take up the testimony, please, that shows I was out of the country serving as a trierarch and that my father had been dead for quite some time when this fellow was

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of her marriage. Nonetheless, Apollodorus is intent on creating the mirage (?) that his mother was an *epiklēros*.

[45]Such a law no doubt existed and is paraphrased at Is. 8.31, 10.12, fr. 25 Thalheim; Hyp. fr. 192 Jensen. Whether it was worded precisely as here is uncertain. The law may be Solonian in origin; late lexicographers (Ruschenbusch [1966] F 54) report that the word *sitos* (translated "grain" above) was used in a law of Solon for "the produce given for maintenance to women or orphans."

[46]The age of puberty is sometimes designated as 14, sometimes 16: see Rhodes 1981: 503 for references.

[47]Apollodorus in his paraphrase of the law says that "sons who are past puberty are to be guardians (*kyrioi*) of their mother" (similarly, Hyp. fr. 192 Jensen); but the law just cited does not use this word. We do not know if this is Apollodorus' addition to the law (as Harrison 1968: 113 n. 2 and Gernet 1957: 184 think) or if the law explicitly made the sons of an *epiklēros* guardians (*kyrioi*) not only of her property (as the law does here) but also of her person, even if her husband were still alive.

[48]Probably 368/7; see the Introduction to Dem. 45, n. 18.

getting married[49] and that I demanded of him the female slaves and that I asked to have them examined under torture regarding these very points, to see whether they were true, and that I issued him a challenge.[50]

[DEPOSITION]

They testify that they were present when Apollodorus was issuing a challenge to Phormion, when Apollodorus was demanding of Phormion that he hand over his female slaves for examination under torture, "if Phormion denies that he seduced my mother before the time he says he wed her after having been betrothed to her by Pasion." When Apollodorus issued this challenge, Phormion refused to hand over the female slaves.

[22] Read now, in addition, the law requiring that adjudication hearings be given for all *epiklēroi*, both foreigners and Athe-

[49]Pasion probably died in 370/69; see the Introduction to Dem. 45, n. 13. Gernet 1957: 192 suggests that Apollodorus is trying to insinuate, by stating that his father had been dead "for quite some time" before Phormion married Archippe, that the marriage was not a response to a will's bidding (i.e., the will is a fake). Paley and Sandys 1896: 143 think that Apollodorus wants to insinuate premarital "intrigues" between Phormion and Archippe, just as "the writer of the deposition in 46.21 seems to have understood it." The two views are not necessarily mutually exclusive.

[50]The deposition that follows is thought to be inauthentic on the grounds that (1) it does not name the witnesses; (2) the use of the first possessive adjective ("my mother") is inappropriate in it; and (3) the contents are different from what the listener expects based on the words introducing it. The most serious objection (3) can be answered by hypothesizing that the deposition has been drastically abridged, and the copyist has decided to give only the juiciest part, for the question of the timing of the wedding is in fact linked to the date of Apollodorus' trierarchy, and the latter reported at 45.3–4 that he was terribly upset at the marriage and had indicted Phormion for *hybris*.

nians, and that, regarding citizens, the Archon is to introduce and oversee cases, and regarding metics, the Polemarch is to do so,[51] and that it is not permitted to have possession of an estate or an *epiklēros* without an adjudication hearing.[52]

[LAW]

The Archon is to assign by lot [days for hearings of disputes over] estates and *epiklēroi*, in every month except Skirophorion. And no one may possess an estate without an adjudication hearing.

[23] If, then, Phormion wanted to proceed correctly, he ought to have obtained a hearing for the *epiklēros*, whether his claim was right by gift[53] or by proximity of kinship, either before the Archon if he were claiming her as an Athenian or before the Polemarch if as a foreigner; and at that time, if indeed he had any just claim to make, upon convincing those of you who had been allotted jury duty, he ought to have become her guardian in accordance with the laws and your verdict[54] instead of achieving what he wanted by making laws for his own personal use.

[24] Consider also the next law that permits any will made by

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[51] Cf. *Ath. Pol.* 58.3.

[52] Undoubtedly, this is a highly selective "cutting" from the "bouquet" of laws regarding the adjudication of heiresses and estates. There is no reason, however, to doubt that such a provision belonged to the Athenian lawcode, even if it was perhaps worded differently. Skirophorion is the last month of the Attic year (roughly our month of June). Apparently, there is not enough time for the different steps of a disputed estate to run its course before the change of magistrates at the turn of the year (see the Introduction to this volume, IV.2.a).

[53] I.e., by a will (Pasion's), specifying a husband for the *epiklēros*.

[54] Apollodorus continues his argument that his mother was an *epiklēros*, and therefore Phormion should have claimed her at law with a hearing called an *epidikasia*.

a father, even though legitimate sons exist, to become valid if the sons die before reaching puberty.[55]

[LAW]

In whatever way a father disposes [of his property], even though legitimate sons are alive, if the sons die before they are two years past the age of puberty, the father's will is to be valid.

[**25**] Surely, then, when they are alive, not only is the will invalid that they say my father left behind but also Stephanus here testified falsely and contrary to all the laws, [saying] that the document is a copy of Pasion's will. [*To Stephanus*] For how do you know this and where were you when my father was drawing up the will? Clearly you are manipulating evidence for court cases, not only by readily giving false testimony yourself but also by stealing depositions that are true,[56] by deceiving the judges, by leaguing together with others against the interests of justice. But the laws have also provided a public indictment against such conduct as this. [*To the secretary*] [**26**] Please read this law too.[57]

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[55]Since the wording of the law that follows is almost identical to Apollodorus' paraphrase that precedes it, the law may or may not be a later creation. Scholars have generally accepted at least its essence—even if not its formulation here—as authentic; a similar provision appears in Plato *Laws* 922a–923c. For discussion of the meaning of the Greek verb *diathesai*, translated here as "disposes [of his property]," and of the noun *diathēkē*, "will," see Wyse 1904: 325–327.

[56]See Dem. 45.58n.

[57]The law that follows may be authentic; for discussion see MacDowell 1983: 66–67. The italicized clause has been viewed as problematic; without it, the law appears to concern bribery having to do with both public and private lawsuits and provides public indictments (*graphai*) for the offenses. Conspiracy and forming clubs for the overthrow of the democracy seem out of place, being crimes of treason and usually treated by a different procedure, denunciation (*eisangelia*); various changes to the text have been proposed (see, e.g., Gernet 1957: 193). That it was unlawful for "advocates"

[LAW]

If anyone enters into conspiracy or bribes[58] the Heliaia[59] or any of the courts at Athens or the Council by giving or receiving money for the purpose of bribery *or if anyone organizes a club for the purpose of overthrowing the democracy*, or if anyone as an advocate accepts money for acting in lawsuits,[60] whether private or public ones, there shall be indictments for these offenses before the *Thesmothetai*.

27 [*To the judges*] Now in regard to all these matters I would like to ask you: according to whose laws have you sworn to give your verdict—the laws of the city or the ones that Phormion has enacted for himself? I for my part furnish these laws for you, and I prove that both these men have transgressed them, for Phor-

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(*synēgoroi*) to accept money for acting in lawsuits is attested at Dem. 18.16 and Lyc. 1.138.

[58]The first known instance of the bribing of a jury (reported by *Ath. Pol.* 27.5) probably took place in 409 (Diodorus Siculus 13.64.5–7); the law cited here may have been enacted as a result of this case (see MacDowell 1983). The verb used in the law is *sundekazein* ("bribe all together by tens"?) and the verb used in the *Ath. Pol.* (27.5) is *dekazein* ("bribe by tens"?). One may well wonder how a large Athenian panel of judges could be bribed; nonetheless, until the late fifth century, the method for assigning judges to courts allowed one to identify the judges who would be assigned to particular courts in advance of trial; for speculative details, see Harrison 1971: 239–241.

[59]The "Heliaia," in this context where it is set apart from "the courts," might refer to the Assembly acting as a lawcourt; the meaning, however, has been controversial (see Ostwald 1986: 10–11). Large-scale bribery subsequent to a meeting of the Assembly (*ekklēsia*) is reported at Lys. 28.9 and seems to have had for its purpose the forestalling of trials.

[60]An "advocate" (*synēgoros*) speaks in court instead of or in addition to a litigant in both private and public lawsuits. Advocates (*synēgoroi*) might also have been appointed by the Assembly to serve as a team of prosecutors in certain kinds of public cases. The law cited here seems to assimilate both kinds and makes the accepting of money by them unlawful. Allegations that one's opponent has paid his advocates appear at Dem. 44.3; Din. 1.111 (of Demosthenes); and Lyc. 1.138.

mion wronged me at the outset and defrauded me of the property that our father had left behind and leased to him along with the bank and factory, while Stephanus here testified falsely and contrary to the law.

[**28**] It's also worth reflecting on this, judges: no one ever makes a copy of a will; men make copies of contracts so they may know the provisions and not transgress them, but not of wills. This is the reason why men who are disposing of their property leave behind wills that are sealed up—so that no one may know what they have written.[61] How then do you know that the provisions written in the document are a copy of Pasion's will?

I beg and entreat all of you, judges, to assist me and to punish men who so readily give false testimony; I ask this on behalf of you and me and justice and the laws.

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[61] The text might not be sound here, but whatever the original text, two relevant observations can be made: (1) litigants often claim that testators do not make known the contents of their wills even to those witnessing them (e.g., Is. 4.13) but they are not necessarily speaking the truth; (2) duplicate copies of wills are attested in ancient sources: e.g., two copies of Diodotus' will, one in Diogeiton's keeping and another in Diodotus' house (Lys. 32.7). For this information and other matters regarding the protection of wills, see Wyse 1904: 386–387.

47. AGAINST EVERGUS AND MNESIBULUS

INTRODUCTION

Speech 47, like 45 and 46, belongs to a suit for false witnessing. As in that case, the contested testimony involves a challenge, this time to interrogate a slave woman under torture regarding who struck the first blow in a fight that broke out between the unnamed speaker and Theophemus. The speaker had begun a suit against Theophemus for assault (*dikē aikeias*), and the latter in turn had initiated the same kind of suit against the speaker. Theophemus managed to delay the speaker's case, but Theophemus' case against the speaker went to court, and the speaker was the loser. Theophemus' witnesses (Evergus and Mnesibulus, his brother and brother-in-law) had testified that during the official arbitration preceding the trial,[1] Theophemus had challenged the speaker to take the woman and torture her for information, and also that Theophemus was ready to deliver her. The speaker claims the testimony is false: in particular, Theophemus never provided the woman in person (47.5–7).

The incidents that led up to the lawsuit for false witnessing are complicated; the speaker's narrative is not straightforward and contains much that is irrelevant to the legal issues of the case. The irrelevant issues, however, are of great interest to us, providing, for example, details of the Council's administration of naval affairs (including a decree of the Council to denounce a

[1] For official arbitration, see the Introduction to Dem. 39, nn. 12–13.

trierarch)[2] and an episode in which experts on sacred law (the "Interpreters" or *exēgētai*) are consulted regarding proper conduct after the killing of a freedwoman (47.67–73).

The Sequence of Events

The major episodes adduced by the speaker in his dispute with Theophemus can be set in the following chronological sequence:

1. *The speaker sues Theophemus to recover equipment for his ship*: The speaker was recently slated to serve as a trierarch; in this role, he was obliged by certain decrees and by Periander's law[3] to recover ship's gear from the trierarchs of the preceding year (47.20–22). One of these ex-trierarchs, Theophemus, simply refused. The speaker followed the rules and duly summoned him to an adjudication (*diadikasia*) before the dispatchers and overseers of the dockyards. The court decided that Theophemus was indeed liable for the equipment; it was the duty of the new trierarch (i.e., the speaker) to collect it himself (47.26–29).

2. *The Council passes a decree*: Theophemus still refused to hand over the equipment. The speaker returned to the dispatchers and the Council, this time in company with other new trierarchs who found themselves in similar difficulty. The Council passed a decree, instructing trierarchs to make their recoveries in whatever way possible (33).

3. *The fight between Theophemus and the speaker*: After a number of futile attempts to find Theophemus, the speaker, decree in hand, goes to his house with an official attendant; a slave woman answers the door and goes to fetch him; Theophemus arrives; the speaker demands the ship's inventory; Theophemus refuses and threatens the speaker, who orders the attendant to summon witnesses (34–36). The speaker then requests Theophemus either to make a claim before the magistrates that he was not liable for the equipment or

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[2]The trierarch was assigned to equip and command a warship for one year (see 47.20n). For the procedure of denunciation, see 47.42n.

[3]For the decrees and law mentioned here, see 47.21–22nn.

else to hand it over; if he does not comply, the speaker will seize security in accordance with the laws and decrees. Theophemus does not comply, and the speaker seizes the slave woman; Theophemus stops him; the speaker enters the house. Theophemus (according to the speaker) strikes him, and the latter calls for witnesses and defends himself (37–38). As a consequence, the speaker and Theophemus each sue the other for assault.

4. *The Council convicts Theophemus*: The speaker reports the events to the Council; its members order him to denounce (*eisangellein*) Theophemus on the grounds that he was acting unlawfully and obstructing the naval expedition. They convict Theophemus and then vote on the penalty: either to penalize him 500 drachmas or to refer the case to the court for a more severe penalty. Theophemus and supporters beg for lenient treatment, hand in the ship's inventory, and agree to submit the dispute about the blows to a private arbitrator of the speaker's choice; the latter concedes to an "additional penalty" of 25 drachmas (41–44).

5. *The official arbitrations of the two lawsuits for assault*: The speaker then departs on the expedition and carries out his trierarchic service. When he returns, Theophemus refuses to refer the dispute about the blows to a private arbitrator, and so the speaker files an action for assault against him. Theophemus, in turn, sues the speaker on the same charge (45). The suits first go before separate official arbitrators (45): Theophemus, in the arbitration of his suit against the speaker, challenges the latter to accept the slave woman for questioning under torture (5); the speaker, in the arbitration of his suit against Theophemus, similarly challenges the latter to provide his slave woman for questioning under torture (10).

6. *The speaker's suit against Theophemus*: When it was time for the decision of the official arbitrator, Theophemus entered a special plea to bar action (*paragraphē*) and applied for a postponement under oath (*hypomosia*).[4] The grounds for doing so are un-

[4]Some scholars have thought that *paragraphē*, when conjoined with the oath for postponement (as here and at 21.84) means something differ-

clear. After the Council had convicted Theophemus during the trial by denunciation (*eisangelia*), the speaker and Theophemus had reached an agreement that included the speaker's concession to the "additional penalty" of 25 drachmas. He nowhere offers an explanation for the penalty—viz., why it was "additional" and what it was for. Since Theophemus did hand in the inventory (43) and the speaker did leave Athens in his ship (45), it may be presumed that Theophemus did surrender his equipment.[5] But since Theophemus had defied rulings of the court and Council, the latter body may still have penalized him the full amount. The "additional penalty," conceded by the speaker, may then have been for the blows he had received; a promise to refer the dispute about them to a private arbitrator may have been to decide the question of the blows Theophemus claimed to have received. Alternatively, the speaker may have agreed with a lenient Council that, in addition to the prompt return of the equipment, a small fine of 25 drachmas would be sufficient.[6] In either case, the fine could be viewed as "additional," and Theophemus may have chosen to view it as a settlement for the blows to the speaker—whether true or not. Theophemus may then have filed his special plea (*paragraphē*) on the grounds that the speaker's case against him had already been decided (*res adjudicata*); now it would be postponed until the special plea was heard.

7. *Theophemus' suit for assault against the speaker*: Theophemus'

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ent from an ordinary *paragraphē* (see MacDowell 1990: 306–308 for discussion of the different views and presentation of the sources). Here, however, it does seem that the *paragraphē* refers to the ordinary special plea to bar a lawsuit. For the protocol for postponing a hearing before an arbitrator, see 39.37n and below, 47.39n. It is not known whether the opposing litigant had to agree to the grounds for postponement.

[5]See Rhodes 1971: 156 and n. 7. Similarly, Gernet 1957: 197 and n. 3 (mistakenly citing *IG* II 799D for 794D); Davies 1971: 226; Gabrielsen 1994: 165 and n. 37. The last three scholars point to *IG* II^2 1612, lines 313–316, as probably recording the return of the equipment by Democharis and Theophemus (in 357/6 [Davies] rather than 356/5 [Gabrielsen]).

[6]Similarly, Gernet 1957: 197.

suit against the speaker, however, went to court, and the speaker was convicted on the basis (so he claims) of the testimony of the two witnesses who testified that Theophemus was ready to hand over the slave woman for questioning (46). Since the slave woman was *not* delivered for interrogation, the judges concluded (so the speaker infers) that he was trying to avoid the woman's evidence about the assault (7). The speaker was fined 1,100 drachmas for the judgment penalty, and 183 drachmas and 2 obols for the *epobelia*,[7] and 30 drachmas for the court fees (64). The speaker subsequently brings a suit for false testimony against the two witnesses, and this is the suit for which Speech 47 was written.

8. *The seizure of the speaker's property*: When the final day for the speaker's payment of the judgment penalty arrived, he asked for a postponement: he had been assigned another trierarchy, and the money intended for Theophemus must now be redirected to fulfilling the liturgy (i.e., fitting out a ship). Theophemus agreed. Not many days later, the speaker collected the sum he owed Theophemus and asked him to accompany him to the bank for payment (49–51). Instead of doing so, Theophemus seized fifty sheep belonging to the speaker, as well as a shepherd, a slave boy, and a costly bronze pitcher. He then went to the speaker's farm along with Evergus and Mnesibulus, and, in the presence of his wife and children, carried off the furniture and brutally mauled the speaker's old nurse, a former slave now freed, in an attempt to wrench a cup from her (52–61). The next day, Theophemus' brother Evergus returned to the speaker's farm and carried off the remaining furniture (62–63).

9. *The speaker pays Theophemus the judgment penalty*: The speaker then made full payment before witnesses at the bank and asked Theophemus to return the sheep, slaves, and furniture. He refused unless he and his cronies should be released from the charges and the witnesses from the suit for false testimony (64).

10. *The death of the old woman*: The woman meanwhile dies. The speaker goes to the Interpreters (*exēgētai*) who advise him not to bring a homicide suit. The speaker complies (67–73).

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[7] For the *epobelia*, see 47.64n.

11. *The suit for false witnessing comes to court*: Perhaps not much later, the speaker's suit against the witnesses (the present case) is tried.

The Challenge

At issue in the false-witnessing trial is the testimony that Theophemus challenged the speaker to accept the slave woman for questioning under torture regarding who struck the first blow in the fight between Theophemus and the speaker. The latter is elusive when he speaks of the challenge: he never offers anything that remotely resembles a paraphrase of the testimony and focuses instead on his claim that *he, the speaker*, was the one who challenged his opponent to supply the slave woman for questioning. Thus, he seems to be denying that Theophemus made any challenge at all (cf. his opening disparaging remark about litigants who produce witnesses who testify to challenges that never took place).

The tactics appear similar to those observed in the Introduction to Speech 45: Theophemus (like Phormion) probably had tendered a challenge at the official arbitration that preceded the suit, but the speaker had either (like Apollodorus) refused it or somehow maneuvered so that the interrogation never took place. Instead of speaking precisely about the testimony or the challenge to interrogate the slave woman (and admitting that he refused it), the speaker focuses on the fact that the woman was never produced for questioning, and so Theophemus' challenge was never substantiated.[8]

The speaker spends very little time arguing for the falsity of the witnesses' testimony; certainly, his statements that he had challenged Theophemus on numerous occasions (47.5, 6, 8–10, 40) are not a refutation of the testimony that Theophemus had challenged him. The speaker consigns himself to circumstantial proofs: (1) the witnesses must be lying because there should be

[8]For a speculative reconstruction of the way the challenges functioned here, see Thür 1977: 252–255.

numerous witnesses to a challenge that took place at an arbitration (47.11–12); (2) the witnesses must be lying when they say that Theophemus pressed for a postponement in order to produce the woman, since he was her master and so could have brought her along to the arbitration (47.13–15); (3) the witnesses must be lying because Theophemus attempted to blackmail him with the goods he had seized: he would return them if the speaker would agree to release him and his cronies from charges and the witnesses from the suit for false testimony. Indeed, the last argument offers some grounds for the speaker's inclusion of the episodes of the two seizures, which are otherwise irrelevant to the lawsuit.

But not entirely irrelevant: the speaker at the opening of his speech stated that the greater part of his argument would aim at revealing the character of his opponents rather than the falsity of their testimony (47.4). Some scholars have thought, perhaps correctly, that the speaker was seeking to offset the indignation the judges presumably felt regarding his own entrance into Theophemus' house and seizure of his slave woman. Even though he had arrived with a copy of the Council's decree in hand, instructing him to make the recovery "in whatever way possible," nevertheless, the judges may have felt more sympathy for the delinquent trierarch, the privacy of whose household had been so violently intruded upon (47.79).[9] If so, the lengthy episodes depicting the seizures by Theophemus and cronies and the brutal treatment of the old freedwoman, all occurring after the trial for assault from which the false testimony emerged, thus created a counter to the earlier, far less consequential, intrusion of the speaker into Theophemus' house.

Legal historians have usually focused discussion of this case on the peculiarity of the double lawsuits for assault, calling them "counterclaims" or "countercharges." Harrison has articulated the dilemma posed by the two suits for assault this way: "It is difficult to imagine how the procedure of the speaker's suit [i.e., for assault] could work out in the light of the verdict given in favour of Theophemos in the other suit. It would surely have been absurd

[9]Blass 1893: 544; Thür 1977: 254–255.

if the speaker had been awarded damages against Theophemos in relation to exactly the same incident for which damages had been awarded to Theophemos against the speaker."[10] The Athenian legal system, however, apparently let such related suits unfold this way: first, the one would be heard, and then the other—at least in theory. In practice, the outcome of the first case would affect what followed. In this instance, Theophemus' victory in the first case might have caused the speaker to withdraw his case, except that he decided to proceed first with a suit for false witnessing; if successful with this case, he might possibly proceed against Theophemus with a lawsuit for subornation of witness testimony (47.1). Yet even if he did not try that second lawsuit, a victory in the suit for false witnessing would put him in a very good position for winning the suit, still pending against Theophemus (47.8 and 10), for assault.[11]

Date and Authorship

The speech cannot be precisely dated. Theophemus is denounced before the Council in the archonship of Agathocles in 357/6 (47.44). The speaker then leaves Athens to carry out his trierarchic service (357/6?). The interval between his return and the initiation of his suit against Theophemus cannot be measured, but presumably it cannot have been a long time (early 356/5?). When the speaker is ready to pay the judgment penalty for losing that suit, he is summoned to carry out another trierarchy, this time to fit out a ship for the general Alcimachus. If the two-year interval between one trierarchy and another was not applicable (since the speaker was not himself sailing on the ship) or simply ignored, then the trial for false witnessing may have occurred as early as

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[10]Harrison 1971: 132. Gernet 1957: 198 poses the dilemma similarly and follows Lipsius' solution (see the next note).

[11]This is Thür's solution (1978: 253). Lipsius 1905–1915: 860–862 suggests that if the speaker wins the suit for false witnessing, then it may have been possible for the original suit (Theophemus vs. the speaker) to have a second hearing, which might reverse the original verdict; whether such retrials were permissible is controversial.

355;[12] if the interval did elapse, then the earliest date for the trial would be 354/3.

We cannot identify the speaker, but Theophemus is known to us from naval inscriptions. He carried out three trierarchies: he was sole trierarch on the ship named *Dia* ("Noble Lady") before 357; joint trierarch with Democharesof Paiania on *Euphyes* ("Graceful Lady"), also before 357; and later served as a member of a symmory on *Kekropis* ("The King's Lady") between 356 and ca. 346/5.[13] The repetition of trierarchies and membership in a symmory suggest his family was wealthy. His brother Evergus may be the Evergus who lends Pantaenetus a talent toward the purchase of a mining operation in Speech 37.4.[14]

Scholars generally agree that Demosthenes did not write the speech: it is poorly constructed and painfully repetitive; even its sentence construction is ungainly and raw, unclear and confusing to the reader and probably to the ancient listener as well. It shares many of the stylistic features that appear in the "Apollodoran speeches" (Speeches 46, 49, 50, 52, 53, and 59), and scholars are generally agreed that Apollodorus himself wrote the speech.[15] Apollodorus, however, cannot have been the plaintiff: he had no sons and the speaker mentions a son in 47.62. If in fact Apollodorus did write the speech, then this is the only instance we have of a speech he wrote for someone other than himself.

47. AGAINST EVERGUS AND MNESIBULUS, CHARGED WITH FALSE TESTIMONY

[1] The laws, I think, are fair, judges, in permitting a subsequent trial for false witnessing after the original case has been decided. In this way, if a litigant deceives the judges by produc-

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[12]The interval (whether customary or statutory) is mentioned at Is. 7.38, a speech of the middle or late 350s.

[13]The trierarchies are recorded in *IG* II² 1611, lines 409–410; *IG* 1612, lines 314–315; and 1622, line 615 respectively. For "symmory," see 47.21n.

[14]See Davies 1971: 226, following Kirchner on the basis of the rarity of the name.

[15]See Trevett 1992: 50–76 for discussion of stylistic features and citation of earlier bibliography.

ing witnesses who testify to false statements or to challenges that never took place, or to depositions that have been made contrary to the law, he gains no advantage.[16] Instead, the litigant who has been wronged by such testimony can make a formal objection [*episkēpsis*] to the deposition,[17] come before you, and prove that the witnesses testified falsely about the matter at issue, and thus exact a penalty from the witnesses and hold the party who produced them liable to a charge for the subornation of false testimony.[18] [2] This is the reason why they made the penalty less for the plaintiff who loses a case for false witnessing—so that those who are wronged may not be discouraged by an excessive fine from suing witnesses for giving false testimony, and conversely, they imposed substantial fines on the defendant whom you convict of having testified falsely.[19] [3] Quite rightly, oh judges: for you cast your vote with your eyes upon the witnesses and with reliance upon whatever testimony they confirm.[20] And this is the reason why the lawgiver made witnesses accountable for their testimony: that you may not be deceived and the parties coming before your court may not be wronged. I therefore beg you to hear with goodwill every detail about the whole business from the very beginning; then you'll know from this account how many wrongs I suffered, how the judges were deceived, and how these men testified falsely.

[4] While I would really have preferred to have no part in this

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[16]To testify to depositions "contrary to the law" appears to have been a bona fide prohibition in the Athenian lawcode; see 46.10, where the law is paraphrased and adduced. For the claim that a challenge did not take place, cf. the Introduction to Dem. 45 at nn. 23–26.

[17]The litigant makes the "formal objection" (*episkēpsis*) at the end of the trial, during which the testimony was given but *before* the judges vote on the case; the objection indicates that the litigant intends to sue the witnesses after the current trial ends; see the Introduction to Dem. 45, n. 4.

[18]The suit against the litigant who furnished the witness is called a *dikē kakotechniōn* and is referred to in the law inserted at Dem. 46.10 and also in 49.56.

[19]The plaintiff who lost a *dikē pseudomartyriōn* was not liable to pay the penalty for frivolous prosecution called *epobelia*.

[20]For a similar argument, see Dem. 46.4.

trial, nevertheless, when a man is compelled, it's not unpleasant to proceed against the sort of men with whom you are already familiar. Actually, the greater part of my argument will aim at revealing their character rather than the falsity of their testimony. For in regard to the deposition, I think these men by their own acts prove that they have testified falsely, and there's no need for me to produce witnesses other than the men themselves. [5] For although it was possible for them to be rid of this business and to avoid the risk of appearing before you by confirming through their own action the truth of their testimony, they refused to surrender the woman about whom they have given testimony; for they said that Theophemus had tendered a challenge before the arbitrator Pythodorus of Cedae[21] that he was ready to give her up for interrogation.[22] In fact, it was I who was demanding her surrender—as the witnesses who were present before you in court in the earlier trial testified and will also testify now. Theophemus didn't make a formal objection [*episkēpsis*] against them for testifying falsely,[23] and he is not proceeding against them on a charge of false witnessing. [6] In fact, the defendants themselves all but admit in their deposition that I wanted to take the woman for questioning but that Theophemus demanded a delay and that I was unwilling. Now as for the woman whom I wanted to receive and whom Theophemus—as the defendants claim—had offered to hand over in a challenge, no one saw her present in person, neither at that time before the arbitrator, nor later on in the courtroom, nor was she handed over at any other place; neverthe-

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[21]An official arbitration took place as a preliminary to the hearing of Theophemus' lawsuit against the speaker for assault (*dikē aikeias*); the challenge was issued at this time. The speaker was found guilty at the ensuing trial.

[22]The woman is a slave, although she is not so designated in the text; she is always referred to as *hē anthrōpos*, a pejorative term for a woman (lit., "the female human being"). The same term is consistently used of Neaera in Dem. 59. In Athenian law, slaves could give evidence only if interrogated under torture after a challenge. Free male witnesses testified by means of a written deposition. See the Introduction to Dem. 43, n. 13.

[23]For *episkēpsis*, see above, 5n.

less, these witnesses testified that Theophemus wanted to surrender her and had tendered a challenge, [7] and the judges thought their testimony true and that I was trying to avoid the woman's evidence about the assault, regarding the question which of us two struck the first and wrongful blow (for this is the substance of assault).[24]

Isn't it obvious that these witnesses must have testified falsely—men who don't even now dare produce the woman in person, precisely as they said Theophemus had offered to do in the challenge and precisely as they had testified for him? And isn't it obvious—not only that Theophemus should confirm the truth of their testimony by his own action and that the witnesses should be released from the trial by surrendering the woman in person—[8] but also that she should be questioned under torture about the assault for which I'm suing Theophemus, since he didn't produce her at that time?[25] And isn't it obvious that the proof should emerge from the interrogation regarding the statements that Theophemus made earlier when he was deceiving the judges? For he said during the trial for assault that the witnesses who had been present and who were testifying to the events with a deposition written up in accordance with the law were lying and had been rehearsed by me, but the woman who had been present would tell the truth concerning which of us two delivered the first and wrongful blow, and would give her testimony not in a written document but from the most trustworthy source of evidence: interrogation under torture.

[9] At that time, by using these misleading arguments and by supplying witnesses for them, he deceived the judges—but all this has now been proven false. For he doesn't dare produce the woman in person whom they've testified he was willing to hand over; he prefers his brother and brother-in-law to stand trial for

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[24]This appears to have been the juridical definition of assault and appears frequently throughout this speech (47.8, 15 [variant], 35, 39, 40, 42) and elsewhere (e.g., Dem. 23.50 and Isoc. 20.1).

[25]The speaker's own suit for assault against Theophemus has not yet been heard by the court; Theophemus had gotten it postponed; see the Speech Introduction.

false witnessing rather than surrendering the woman himself and being rid of his trouble in a just way—and not with arguments and supplications on the chance that his brother and brother-in-law can win an acquittal by deceiving you. [10] And though I repeatedly issued challenges and demanded the woman and I asked to have her at my disposal both at that time and after the trial, and also when I paid them the penalty, and again in my suit against Theophemus for assault and at the preliminary inquiry [*anakrisis*] for the suit for false witnessing,[26] and while these men pretend just the opposite—in words, they testify falsely, and in deed, they refuse to surrender the woman—for they knew well if she were questioned under torture, they would be convicted of doing wrong, not of suffering it. The secretary will read to you the relevant depositions to prove that I'm speaking the truth.

[DEPOSITIONS]

[11] Well then, you have the testimony that although I frequently issued challenges and demanded to have the woman at my disposal, no one surrendered her. And that you may know by circumstantial proofs as well that they have testified falsely, I'll show you: for even if the assertions of these men were true, namely, that Theophemus issued a challenge and was going to surrender the woman in person, surely they would not have used only two witnesses, his brother-in-law and his brother, as witnesses to the truth, but many others as well.[27] [12] The arbitration took place in the Heliaea (for the men who serve as arbitrators for the Oeneïd

[26] "At that time" might refer to the official arbitration that preceded Theophemus' suit for assault against the speaker; "after the trial" means after Theophemus' suit against the speaker. For the timing of the penalty payment, see 47.64. The phrase "in my suit against Theophemus for the assault" might refer to the official arbitration that preceded that suit before Theophemus had it postponed. The speaker's depiction of the different "pretrial events" suggests there were separate arbitrations for each suit; see 47.45n.

[27] For the argument, cf. Dem. 45.13.

and Erectheïd tribes hold their hearings there);[28] and when there are challenges of this sort, whenever someone brings a slave in person and hands him over for torture, many men are present listening to what is said, so there would have been no dearth of witnesses, if indeed there was a shred of truth to their testimony.

[13] Well then, judges, they testified in the same deposition that I refused an adjournment and that Theophemus kept pressing for one so that he might hand over the woman to me. But I'll show you this is a lie: for if I had been the one who issued to Theophemus this challenge that they've attested on his behalf, asking that he hand over the woman, [14] it would've been reasonable for him to answer with these words and to press me to adjourn the arbitration for a later meeting that he might fetch the woman and hand her over to me. But as it is, they testified that it was you yourself, Theophemus, who wanted to hand over the woman and that *I* didn't want to have her. How can that be? When you were her master and were intending to offer this challenge that they've attested for you, and when your only refuge was this woman, as if she held the scales of justice in her hands, and [15] you hadn't a single additional witness to support your contention that the first wrongful blow was mine, how could you not have gone before the arbitrator with the woman in tow and surrendered her so she would be present in person—you, her master? No, you say you issued the challenge—but as for the woman: no one saw her! She was the means by which you deceived the judges, by supplying false witnesses to say that you were willing to give her up.

[16] Well then, since the woman was not present with you at the time—no, indeed, the *echinoi* had already been sealed up[29]—was there any later occasion when you brought the woman into the marketplace or before the court? For if she wasn't present with you at that time, then surely you ought to have surrendered her

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[28] Official arbitrations took place at various locations, depending on the tribe affiliation of the defendant; see 45.17n.

[29] An *echinos* is a pot with a lid used to preserve documents for trial; see Dem. 39.17n. It would have been sealed up at the end of the arbitration hearing.

subsequently and to have produced the testimony of witnesses to show you wanted the proof to depend on her statements just as you said when you issued the challenge; after all, the challenge had been cast into the *echinos* along with a deposition attesting your willingness to hand her over. Well then, when you were about to go to trial, did you ever bring the woman before the court? [17] And yet, if what the witnesses claim he issued as a challenge were true, then at the time when the court panels were being assigned by lot,[30] he ought to have brought the woman along, and, with the herald in tow, asked me, if I was agreeable, to interrogate her under torture, thereby turning the judges as they entered court into witnesses of the fact that he was ready to hand her over.[31] But as it is, he deceived you with his statements, he has produced false depositions, and not even now does he dare produce the woman, although I often challenged him and made this request as the witnesses who were present at the time have testified. Please read these depositions once again.[32]

[DEPOSITIONS]

[18] I also want to go into some detail about this lawsuit, judges, how the dispute arose between me and Theophemus; you'll see that it wasn't only against me that he unjustly won a conviction when he deceived the judges, but also at the same time and by the same vote against the Council of Five Hundred. Moreover, he rendered the judgments of your courts invalid, your decrees and laws invalid, and weakened your confidence in the magistracies and in the words inscribed on your *stēlai*.[33] I'll show you step by

[30] The judges who would serve on the different courts in use in Athens on a particular day were allotted to a specific court in the early morning of the day the trial was to take place. For the procedure, see *Ath. Pol.* 63 and Boegehold 1995: 31–24.

[31] See 45.16n.

[32] Not only is the speaker's own language repetitious; he must even have the depositions read out twice over!

[33] The speaker refers to the pillars on which were inscribed the records of the magistrates in charge of naval equipment.

step how he did this. [**19**] For never before in my life have I had any business dealings with Theophemus nor have we ever been involved in any revelry or love affair or drinking spree that led me to his doorstep after a quarrel in which he got the better of me or because of a provocation sparked by drink or amorous rivalry. Instead, at the bidding of the decrees and law of the Assembly and Council, I asked him for the trierarchic equipment that he owed the city. Now I'll explain to you why I did this.

[**20**] A departure of triremes with military aid happened to be scheduled for hasty dispatch.[34] The equipment in the dockyards was insufficient for the ships, yet those who owed equipment, although having it in their keeping, had not returned it.[35] Besides this, even in Piraeus there were no surplus supplies to buy—sailcloth and hemp and cables—the materials used for fitting out a trireme. Chaeridemus therefore proposed this decree so that the equipment for the ships might be recovered and made seaworthy for the city. Please read the decree.[36]

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[34]The "hasty dispatch" in 357/6 may have been required by the Social War, Athens' war with her allies; see Rhodes 2006: 239–240.

[35]A trierarch (see Dem. 39.8n) in charge of a ship from the preceding year was responsible for returning public equipment for that ship (sails, oars, etc.) to the next trierarch. If he did not return it, the new trierarch had the right to make a claim against the former trierarch. Such a procedure seems provided by the poorly preserved late fifth-century Naval Law (*IG* I^3 236, lines 3–9). The decrees and law of Periander mentioned in 47.20–21 changed this simple procedure so that the new trierarch was *compelled* to recover the equipment, and the obligation to recover equipment fell not only on the next trierarch but also on the *epimelētēs* ("overseer") of the symmory to which he belonged. See further 47.21nn and Gabrielsen 1994: 160.

[36]This decree (possibly of the Council) may have been specifically concerned with the recovery of equipment for the triremes being readied "for hasty dispatch" (47.20). The contents of the decree might be given in 47.44, ordering "the confiscation of property not only of those who had equipment in their keeping but did not return it to the city but also of those who owned their equipment personally but refused to sell it" (similarly Rhodes 1972: 154). If so, then the decree is clearly different from the additional decree of the Assembly mentioned at the end of 47.21.

[DECREE]

[21] Now when this decree had been passed, the board of magistrates[37] apportioned by lot [the names of] the men who owed equipment to the city and transmitted them to the overseers of the symmories[38] and to the trierarchs who were sailing out at the time. And the law of Periander, according to which the symmories had been set up, compelled and ordered them[39] to receive [the names of] those who owed equipment.[40] Additionally, another decree of the Assembly required that the debtors be parceled out to us for the purpose of recovering from each the proportionate amount. **[22]** Now it happened that I was trierarch and overseer of a symmory and that Democharés of Paeania[41] was in the symmory and owed equipment to the city together with this Theophemus since he had served as joint trierarch with him. Both these men had had their names inscribed upon the *stēlē* as owing equipment to the city, and the new board of magistrates,[42] upon

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[37]The board is probably that of the overseers of the dockyards: see 47.22n.

[38]A symmory is a company or board of men assigned yearly by the general in charge of the symmories (*Ath. Pol.* 61.1). See the Introduction to Dem. 42, nn. 1–5.

[39]I.e., the new trierarchs and the overseers of the symmories. The phrase "according to which the symmories had been set up" appears in the manuscripts after the Greek word for "equipment"; I follow Reiske in transposing the phrase to follow "the law of Periander."

[40]Periander's law, probably passed ca. 358/7, created a symmory system for the trierarchy (twenty symmories with sixty members each; cf. Dem. 14.16–17). Rhodes 1972: 155 n. 8 and 157 suggests that the law may also have introduced the direct transfer of equipment from one trierarch to another. This possibly explains why numerous trierarchs found themselves in the same plight as the speaker: "Theophemus and his fellow offenders were taking advantage of uncertainties caused by the new law."

[41]Democharés (*APF* 3737) was brother of the Phrynion mentioned in Speech 59.30. He served as joint trierarch with Theophemus at some date before 357/6 (*IG* II² 1612, lines 313–316).

[42]The board is probably that of the overseers of the dockyards (see Rhodes: 1972/85: 155 n. 3); they regularly published lists of the equipment they received and transmitted (see the headings of *IG* II² 1607, 1611, and

receiving their names in turn from the board leaving office, transmitted them to us in accordance with the law and the decrees. [**23**] I was therefore compelled to get the equipment. Before this, on the numerous occasions when I had served you as trierarch, I never once took equipment from the dockyard but customarily provided it myself, whenever necessary, from my own stores so that I might have as little trouble as possible with the city; but on the most recent occasion, I was compelled to receive the names by the decrees and the law. [**24**] To prove that I'm telling the truth, I'll furnish as witnesses both the decree and the law, and then the board of magistrates that transmitted the names and brought the cases into court, and finally members of the symmory in which I was the overseer and trierarch. Please read these.

[LAW. DECREE. DEPOSITIONS.]

[**25**] Well then, you've heard from the law and decrees that I was under strict obligation to take charge of the men who were indebted to the city. And the member who transmitted the names has testified to you that I in fact did take charge of them from the board. So it's reasonable for you, judges, to consider at the outset this question first: was it I who was acting unjustly, when I was under obligation to recover the equipment from Theophemus, or was it Theophemus who, though he owed the city the equipment for so long a time, failed to return it? [**26**] For if you consider the matter point by point, you will discover that Theophemus is the one whose every act was unjust, and not only is this my allegation, it was also the judgment voted by the Council and court.[43] For when I received his name from the board, I at first went to him and requested the equipment; but inasmuch as he refused to

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1623). The particular *stēlē* mentioned here, with the names of the former trierarchs Democharés and Theophemus as owing equipment to the city, is preserved: *IG* II² 1612, lines 313–316.

[43]The Council convicted Theophemus on a charge of failing to return the ship's equipment (47.42), and the court found him liable during an adjudication to determine whether Theophemus owed the equipment (47.27–28). *Ath. Pol.* 46.1 broadly describes the important role played by the Council in overseeing the fleet.

give it up at my request, later, when I chanced upon him near the Hermes close to the little gate,[44] I summoned him before the dispatchers and the overseers of the docks. For these were the magistrates who at that time were introducing the adjudications concerning ship's equipment into court.[45] [27] I'll provide the men who served the summons as proof that I'm telling the truth.

[WITNESSES]

Well, the summoners have testified in my support and prove that I summoned him. Now please take the testimony of the dispatchers and the board to prove that the case was introduced into the courtroom.

[TESTIMONY]

[28] Now the man whom I thought would cause problems, Democharas of Paeania, though surly before entering the courtroom, gave back his own share of the equipment after he was tried and convicted. And the man whom I would never have imagined capable of pushing villainy to such an extreme that he would venture to rob the city of its equipment, has in fact proceeded apace with lawsuits and other chicanery. And, though he was present in court when his case was introduced, he at no point made a defense, nor did he have his name entered for an adjudication with anyone [as he should have done] if he meant to claim that some-

[44]A pillar dedicated to Hermes by the Archons of 493/2 near the "City Gate" of the north fortification wall of Piraeus.

[45]The "dispatchers" (*aposteleis*) were probably an extraordinary appointment required for the "hasty dispatch" of triremes (47.20); they are attested in the fourth century here in this speech and in *IG* II² 1629, lines 251–258 of 325/4 (Rhodes and Osborne 2003: no. 100), where ten are to be chosen from all the Athenians to look after the dispatch of the fleet as the Council has ordered. The "overseers of the dockyard" (*epimelētai tōn neoriōn*) are depicted as introducing cases without the dispatchers in *IG* II² 1631, lines 353–355 (325/4). A duty of the court of the overseers and dispatchers was to judge the claims of new trierarchs against the trierarchs of the preceding year who were alleged to have owed equipment to the city.

one else was in possession of the equipment and that it was not his duty to return it;[46] instead, he allowed the verdict to be brought against himself. [29] But after he left the courtroom, he was no more ready to return anything—no, he thought that for the present he would keep quiet and stay out of the way until I should have sailed off with the ships and enough time should have passed. He thought that eventually I would be obliged upon my return here either to pay for the equipment that he owed the city or else to pay the debt to my successor, who would arrive from the symmory to take command of the ship. And in that case, what response could I have made if he were bombarding me with decrees and laws to prove that it was my duty to recover the equipment? [30] And after that time had passed, when I, upon my return, would demand the equipment, Theophemus would have said that he had already returned it, and as proof that he had done so, he would have cited the timing, the urgency, the fact that I wasn't such a simpleton nor again that I had ever been such a good friend of his as to offer him a postponement! Why then should I have granted him a postponement for the recovery of the equipment when I was serving as trierarch for the city and as overseer of the symmory, and when there were decrees of such a kind and a law as well?

[31] With these calculations in mind, Theophemus for the time being didn't hand over the equipment but kept himself well out of the way; later he would rob me, he thought, and besides this, he would take refuge in an oath and perjure himself without a second thought just as he has also done to others. The greediness that marks the man's character where his own interests are at stake is appalling, as I'll show you by his conduct. For although he owed the equipment to the city, he kept saying the debt was Aphareus',[47] but in fact he didn't register himself for an adjudication with the man, knowing full well he would be shown up as a liar once he entered a courtroom. [32] For Aphareus proved that Theophemus had calculated the cost of the equipment in

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[46] See 47.26n.

[47] Theophemus and Democharis had taken over Aphareus' trierarchic service on the *Euphyes*. Aphareus (*APF* 7716) was the adopted son of Isocrates ([Plut.] Moralia 838a and 839d). Father and son had performed three trierarchies and other liturgies as well (Isoc. 15.145).

his possession and had received it from him at the time when Theophemus took over Aphareus' trierarchy. And now Theophemus claims he handed on the equipment to Democharés and is suing the children of Democharés, who is dead. But while Democharés was alive, Theophemus didn't file for an adjudication with him, even though I was pursuing him for the equipment; no, he wanted to use the lapse of time as a pretense to rob the city of its equipment. The secretary will read the depositions to prove that I'm telling the truth.

[DEPOSITIONS]

[33] Well then, after reflecting on all these matters, and hearing from his associates what sort of man he was when his interests were at stake, and failing to recover the equipment from him, I went before the dispatchers and the Council, saying that Theophemus refused to return the equipment to me for which the court had made him liable. And all the other trierarchs who had not received equipment from men who owed it also went before the Council. And after many speeches, the Council replied with a decree that the secretary shall read to you, that we were to make the recovery in any way we could.

[DECREE]

[34] Well then, when this decree had been passed by the Council and no one brought an indictment against it for illegality but it became operative,[48] I then approached Evergus who is present here, the brother of Theophemus (for I was unable to find the latter); and with the decree in hand, I began by demanding the equipment and told him to inform Theophemus; then, after waiting a few days, as he did not return the equipment but treated

[48]Any decree can be blocked, at least temporarily, at the moment of its proposal and even after being voted upon positively, by an indictment for proposing a decree that was "contrary to the laws" (a *graphē paranomōn*); the proposer must then defend his decree in a courtroom trial. If he is successful, the decree, if already voted upon, becomes operative; if unsuccessful, the decree is nullified, and he himself is subject to a penalty.

me with scorn, I took witnesses along with me and asked him whether the estate had been divided with his brother or whether it was shared between the two. [**35**] After Evergus answered that it had been divided and that Theophemus dwelled apart while he himself lived with his father,[49] I learned where Theophemus lived, took an attendant from the magistrates,[50] and went to Theophemus' house.[51] Upon discovering that he was not inside, I asked the woman who answered the knock to fetch him wherever he was; this woman, according to the testimony of these men, is the one whom Theophemus offered to surrender in his challenge, but whom I, despite my demands, am unable to have at my disposal so that you might learn with certainty which of the two of us struck the first and wrongful blow. [**36**] When Theophemus arrived after the woman had fetched him, I demanded the inventory of the equipment and told him I was on the verge of sailing away and I showed him the Council's decree.[52] But when he refused to hand it over at my bidding and instead threatened and ridi-

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[49]As Gernet 1957: 212 nn. 2 and 3 points out, this passage indicates the frequency of the division of an estate between brothers; moreover, this is a case in which the division takes place while the father is alive (similarly, Dem. 43.19). In Dem. 40.14–15, half-brothers divide their father's estate after his death, but they leave the house and servants in reserve for the purpose of recovering property pending lawsuits. For a case (perhaps exceptional?) in which the property remains undivided between brothers after a father's death, see Dem. 44.10, and also the exceptional arrangements made for Apollodorus and his younger brother, still a minor at his father's death, in Dem. 36.8–10.

[50]It is unclear what purpose this "public official" served. If he is the same person as "the boy" whom the speaker orders to summon witnesses in 47.36, he may be more of a witness than an "executant" as Gernet 1957: 196 n. 1 suggests. Nonetheless, his appearance here suggests that the execution of the recovery was partly public (but perhaps only in appearance) and mostly private.

[51]The speaker at last brings us to "the scene of the crime" and the situation that gave rise to the allegedly false testimony about the blows that is the subject of the current lawsuit.

[52]Presumably the other trierarchs who had complained to the Council also carried copies of the decree with them; this is an underexplored aspect of bureaucratic Athens.

culed me, I ordered the boy to summon any citizens he saw coming from the street that I might have witnesses to the altercation. [37] Moreover, I demanded once again that either Theophemus himself should come with me to the dispatchers and the Council, and if he denied owing the equipment, then he should make his case to the men who had transmitted his name and who had required us to retrieve the equipment, or else he should return it. Otherwise, I said, I would seize security from him in accordance with the laws and the decrees.[53] Since he was unwilling to follow any just course of action, I began to take away the woman who was standing at the door, the same one who had fetched him. [38] Theophemus tried to stop me, and I let the woman go and entered the house to seize something as security for the equipment; for the door, as it chanced, had been opened when Theophemus arrived, and he had yet to go inside; also, I had learned he was unmarried.[54] As I entered, Theophemus struck my jaw with his fist, and I called on those who were present as witnesses and defended myself. [39] That I'm telling the truth and that Theophemus struck the first and wrongful blow needs no other proof, I think, than a statement from the woman whom, so the witnesses have testified, Theophemus was ready to surrender. It was with this testimony that Theophemus entered the courtroom on the earlier occasion;[55] I didn't enter a special plea to bar action, nor did I apply for a postponement under oath[56] since these procedures had hurt my case once on an earlier occasion in a different lawsuit; Theophemus deceived the judges, saying that the witnesses whom I furnished were giving false testimony and that the

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[53]The Council had granted the speaker the right to seize Theophemus' property as security for payment; it is a private remedy—it does not appear to be the official's role to offer assistance (see 47.35n).

[54]The speaker may enter the house without worrying that he will cause distress (or even "outrage") to citizen women who may be inside; similar decorum may be seen in 47.60, and its absence, in 47.53.

[55]I.e., at the time of Theophemus' suit for assault against the speaker.

[56]For the oath for postponement (*hypomosia*), see Dem. 39.37n; here it seems envisioned for the day of trial (as it is at 48.23–26 and 58.43). See 47.45n for an oath of postponement before the arbitrator.

woman would tell the truth if she were questioned under torture. [40] But now their actions are shown to be just the opposite of the words they invoked at that time. For although I made frequent requests, I'm unable, as the witnesses have informed you, to get hold of the woman for questioning. Since, then, they refuse to hand over the woman whom they claim he offered, I, too, want to supply the witnesses who saw me when Theophemus delivered the first blow (and this is assault, when someone strikes the first and wrongful blow) especially when I was executing a seizure in accordance with your law and decrees. Please read the decrees and the deposition.

[DECREES. DEPOSITION]

[41] Well then, after I had been robbed of the security and then beaten by Theophemus, I went to the Council; I showed the members my bruises and described what I had suffered and said that it had happened while I was trying to recover equipment for the city. The Council was angered at the treatment I had received and, seeing my condition, believed the outrage was directed not against me but against themselves and the People who had voted for the decree and the law that had made it obligatory to recover the equipment. [42] The Council therefore ordered me to denounce [*eisangellein*] the man,[57] and the Prytaneis[58] to give him

[57] "Denunciation" (*eisangelia*), often translated as "impeachment," is a procedure that must be preceded by a decree of the Council, the Assembly, or both. The specific charges for which a denunciation could be brought appear to have expanded over time but generally concerned major offences against the state such as treason or against magistrates "for not using the laws"; it is unclear under which heading Theophemus' offence fell. Features of the procedure are highly controversial, especially regarding initial stages. See Rhodes 1979 (esp. 109–110 and n. 63) and Hansen 1980 (esp. 93–94) for this case.

[58] The *Prytaneis* were a subdivision of the Council of Five Hundred consisting of fifty members, all from the same tribe; one of each of the ten *Prytaneis* served as a sort of standing committee for one-tenth of the year, convening meetings both of Council and Assembly and prescribing the agenda for each; see *Ath. Pol.* 43–44.3.

two-days notice of the trial on the grounds that he was acting unlawfully and obstructing the naval expedition, for he kept refusing to hand over the equipment and had taken away the security and beaten me as I was attempting to recover the equipment and acting in the service of the city.

Well then, when the trial of Theophemus took place before the Council in accordance with the denunciation [*eisangelia*] that I had brought, and when speeches had been allowed to each side and the Councilors had voted in secret, he was convicted in the Council Chamber and judged to be acting against the law. [43] And when the Council was at the stage of voting by a show of hands, whether to refer the case to the court or to penalize Theophemus with five hundred drachmas, as much as it was authorized by law to impose,[59] when my adversaries were all begging and making entreaties and sending anyone they could find, and when they suddenly handed in the inventory of equipment to the Council and kept saying they would refer the dispute over the blows to arbitration by any Athenian whom I should designate, I conceded so that an additional fine of twenty-five drachmas should be imposed upon Theophemus.[60] [44] And to prove that I'm telling the truth, I entreat all of you who were Councilors during the archonship of Agathocles[61] to inform the men sitting beside you,[62] and I'll furnish as witnesses all the men whom I could find who were Councilors at that time.

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[59]The 500-drachma limit on the Council's capacity to fine offenders appears regularly in the sources (see Rhodes 1981: 540). The Council might order imprisonment before trial but not as a penalty; as here, if it sought a higher penalty, the case must be transferred to a court.

[60]For speculation regarding the meaning of the "additional fine," see the Speech Introduction at nn. 4–6.

[61]Agathocles was Archon in 357/6.

[62]Soliciting the judges "to inform the men sitting next to them" of a "well-known fact" is a common ploy of speakers (see, e.g., Dem. 50.3, and, for a warning against the ploy, Dem. 40.54). In fact, there is not much likelihood that many (if any) Councilors from the preceding year happened to be judges on this panel.

[WITNESSES]

You see, judges, how reasonable I was toward these men! Yet the decree ordered the confiscation of property not only of those who had equipment in their keeping but did not return it to the city but also of those who owned their equipment personally but refused to sell it.[63] So great was the shortage of equipment in the city at that time. [*To the secretary*] Please read the decree.

[DECREE]

[45] Upon my return from the expedition, judges, since Theophemus refused to refer the dispute about the blows I had from him on that earlier occasion to any arbitrator, I summoned him to court and filed an action for assault against him. Then, when he had summoned me, too, in turn, and the official arbitrators were in charge of the suits,[64] after the decision on the case was underway,[65] Theophemus entered a special plea to bar the lawsuit and applied for a postponement under oath.[66] I, on the other hand, confident that I had done nothing wrong, presented my defense to you in court. [46] And he, by supplying that deposition for which no one else but his brother and brother-in-law has offered corroboration, that he was ready to hand over the woman, and by pretending to be innocent, deceived the judges.

Now I have a just request for you: at the same time as you decide whether the deposition is true or false, consider the case from its beginning. [47] For my part, I think that the proof must come from the same place to which the defendant sought refuge on that former occasion, that is, from the woman, by questioning her un-

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[63]This may have been the content of Chaeridemus' decree; see 47.20n.

[64]If there were two separate arbitrators and two separate arbitrations, then the cases were not to be tried together somehow as a "cross-action." See the Speech Introduction at n. 10.

[65]The meaning of the text is uncertain here: see MacDowell 1990: 306.

[66]For the meanings of a "special plea" (*paragraphē*) and the "oath of postponement" (*hypomosia*) here, see the Speech Introduction, n. 4.

der torture to find out which one of us delivered the first and wrongful blow; for this is the meaning of assault. And this is the reason I'm suing the witnesses for testifying falsely because they deposed that Theophemus was ready to hand over the woman, whereas he has nowhere produced her in person, neither when we appeared before the arbitrator nor later, although I requested her frequently. [**48**] They ought therefore to pay a double penalty: one for having deceived the judges by furnishing the false testimony of the brother-in-law and brother; and another for having wronged me when I was readily performing public service for you and carrying out orders and serving your laws and decrees. To prove that I wasn't the only one to receive the mandate from the board to exact equipment from the person who owed it to the city, but that other trierarchs as well exacted equipment from others whom they had been assigned, please read their depositions.

[DEPOSITIONS]

[**49**] Now I also want, judges, to give you an account of the way I was treated by these men. After I lost the lawsuit to them for which I'm now suing these witnesses for giving false testimony, I went to Theophemus when the final day for payment of the penalty was about to expire.[67] I asked him for a little more time, telling the truth, that although I had raised the money that I was intending to pay him, a trierarchy had fallen to me [**50**] and I was obliged to dispatch the trireme speedily, and the general Alcimachus was ordering me to ready the ship for him; accordingly, I had to use the money I had raised to pay Theophemus for this other purpose. I kept asking him to postpone the final day of payment, until I had dispatched the ship. And he answered me in an accommodating and decent manner, "No problem," he said, "but when you have dispatched the ship, get the money for me

[67] A party condemned to pay a fine to his opponent in a private lawsuit (such as one for assault) had a certain time period set by law (unknown to us) within which to pay. Once the deadline was past, his opponent could seize any of his goods without formal process. The litigants might also agree to alter the final date. See Harrison 1971: 190.

as well."[68] [51] Since Theophemus gave me this reply and postponed the final day of payment, and as I counted especially on my formal objection to the false testimony at the trial[69] and on his unwillingness to hand over the woman as protection against his wreaking havoc on my property, I dispatched the trireme, and not many days later I collected the money. I then went to him and told him to follow me to the bank and receive the payment. The secretary will read to you the depositions to prove that I'm telling the truth.

[DEPOSITIONS]

[52] But instead of following me to the bank to receive the payment, Theophemus went and seized fifty soft-fleeced sheep of mine as they were grazing the pastures, and along with them, the shepherd and all accessories of the flock, and then a slave boy who was carrying a bronze pitcher, not ours but a borrowed one of great value. Even this was not enough for them; [53] no, they rushed onto my property (I farm near the Hippodrome and have lived there ever since I was a boy).[70] First, they darted after the household servants, but when these escaped them, fleeing in different directions, they went to the house and broke in the door leading to the garden. Both Theophemus' brother, this Evergus, and his brother-in-law Mnesibulus were there, though they had won no suit against me and had no right to touch any of my things; these men entered into the presence of my wife and children and carried off as much furniture as remained in the house.[71] [54] In fact, they expected to take away not just that much but far more; for they hoped to find the furnishings of the house as they used to be; but because of my public service and tax contributions and

[68] For the lawfulness of such an agreement, see below, 47.77–78, and 42.12n.

[69] See 47.1n.

[70] There were two hippodromes, one near the Illissos, the other in Piraeus; farming property suggests the neighborhood of the former.

[71] That the men entered into the presence of the speaker's wife and children indicates outrageous conduct; cf., e.g., Dem. 37.45–46 and Lys. 3.29.

my lavish expenditures for you, a part has been pawned and is stored away and another part has been sold. They seized, however, all that was still left and went away.

[55] In addition, judges, my wife chanced to be having lunch with the children in the courtyard and with her was an elderly woman who had been my nurse, a loyal and faithful creature whom my father had set free. After she was freed, she had lived together with her husband; but since he had died and she was then an old woman and there was no one to look after her, she came back to me. [56] It was my duty to ensure that neither the woman who had been my nurse nor the slave who had attended me in boyhood should live in want.[72] At the same time, too, I was about to sail away as trierarch,[73] and consequently I was leaving behind with my wife just such a housekeeper as was also to her liking. They were having lunch in the courtyard when these men leapt in and found them and began to seize the furniture. When they heard the screaming, the rest of the female slaves (they were in the tower where they live) blocked off the tower, and although the men didn't enter there, they did carry off the furnishings from the rest of the house.

[57] They did this in spite of the fact that my wife forbade them to touch anything and told them that the items were hers since they had been assessed in her dowry,[74] and moreover she said, "You have fifty sheep and the boy and the shepherd, worth more than the amount that was adjudged to you." (She knew—for one of the neighbors had knocked on the door and reported the seizures to them.) And she also told them that the money had been

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[72]The speaker mentions two (former) slaves in this sentence, one female, one male; perhaps the old nurse's husband had been his attendant in childhood and perhaps the speaker is referring to his care of his household over the length of his adulthood.

[73]The remark does not accord with 47.50, where the speaker seems to be readying a trireme not for his own use but for Alcimachus'. The chronology may have been distorted to create sympathy for the trierarch about to abandon his wife for public service.

[74]See Harrison 1968: 53.

deposited for them at the bank, for she had heard me say so. And "if you will wait," she said, "or if one of you will go and fetch him, you'll depart with the money in your hands. But leave the furniture and don't take any of my belongings, especially as you have in your possession property equivalent to the judgment."[75] [58] In spite of my wife's words, not only did they not stop their rampage but when the nurse took hold of the small cup that was set before her from which she had been drinking and when she put it in her bosom to prevent the men from seizing it since she saw they were inside the house, then the men—Theophemus and Evergus his brother—caught sight of her and treated her so brutally as they were wrenching the small cup away from her [59] that her arms and wrists were all bloodied from having her hands twisted and pulled this way and that by them as they wrenched the cup away, and she had bruises on her throat from being strangled by them, and her chest was black and blue. Indeed, their meanness was such that they didn't stop throttling and striking the old woman until they had yanked the cup free from her bosom.

[60] When my neighbors' servants heard the shrieking and saw my house being plundered, some from their own rooftops were calling out to passersby while others, going into another street and, seeing Hagnophilus passing by, urged him to come. And when Hagnophilus approached, summoned by the servant of Anthemion who is my neighbor, he didn't enter my house (for he thought it wasn't right to do so, at least not while its master was absent),[76] but from his vantage point on Anthemion's property he saw the furniture being carried off and Evergus and Theophemus leaving my house. [61] Moreover, judges, not only did they leave with the furniture, they also were carrying off my son, thinking he was a house servant, until Hermogenes, a neighbor, met them

[75]It seems that a successful plaintiff (in this case, Theophemus) would be accountable to the defaulting defendant for any excess in value of the item(s) seized over the amount owed on the penalty: thus, Biscardi 1999 [1983]: 180–188.

[76]Cf. 47.38n and 53n.

and told them he was my son.[77] The secretary will read you the depositions to prove that I'm telling the truth.

[DEPOSITIONS]

[62] When neighbors brought news of these events to me in Piraeus, I went to the farm and though I discovered that the men were no longer there, I saw that the furniture had been carried off from the house and that the old woman was in sorry plight. Learning from my wife what had happened, I approached Theophemus in the city at dawn the following day, and in the presence of witnesses I asked him first to accept the payment of the fine and to follow me to the bank and then to take care of the woman whom they had beaten and to bring a doctor, whomever they liked. **[63]** While I was saying this and protesting their action, they insulted me over and over again. Theophemus followed me reluctantly, delaying every inch of the way and saying he, too, wanted to have some witnesses (and this he said cunningly in order to waste more time); meanwhile Evergus here straightaway went from the city to my farm with other men of his stamp. The remaining furniture, whatever had been in the tower and had not chanced to be outside on the preceding day, had, out of necessity, been carried down after I had come home. Evergus struck open the door that was barely standing since he and his men had broken it the day before, seized the furniture, and left. Evergus did this, a man to whom I owed no judgment penalty and with whom I had no business dealings at all! **[64]** But upon my making payment to Theophemus (to whom I did owe a judgment), when I paid him in the presence of many witnesses 1,100 drachmas <for the judgment penalty, and 183 drachmas>[78] and 2 obols for the

[77] The action could have been viewed as *hybris*; cf. Dem. 53.16. [Xen.] *Ath. Pol.* 1.10 remarks upon the absence of observable distinction between free men and slaves in Athens.

[78] The words in angular brackets were added to the Greek text by Boeckh. The sum of 1,313 drachmas a couple of lines later is reported differently here and in 47.77 in one manuscript.

epobelia,[79] and 30 drachmas for the court fees[80] (for I owed him none of the other penalties)—well then, upon his taking from me at the bank 1,313 drachmas plus 2 obols altogether, when I asked him for the sheep and the slaves and furniture that he had seized, he refused to return the items unless somebody would release him and his cronies from the charges and the witnesses from the suit for false testimony. [**65**] And when he had given this reply, I asked the men who were present to serve as witnesses to his answer, but I paid out the judgment, for I didn't think it right to be in default. As for Evergus, I didn't know that he had entered my house that day but as soon as the judgment penalty was paid, and Theophemus was still in possession of the sheep and the slaves and the furniture that he had found the day before, a messenger, a stonecutter who was working on the nearby monument, came and told me that once again Evergus had come and gone, taking along with him the remaining furniture from the house—a man with whom I've had no dealings whatsoever! [**66**] Accordingly, to prove that I'm telling the truth, the secretary will read to you the depositions about these matters: that on the day before they had seized my property as security and that on the next day they got the money (and yet if the money had not been raised and I had not informed

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[79]The *epobelia* was a statutory penalty that fell on losing plaintiffs in certain procedures; for its use in a *paragraphē*, see the Introduction to Dem. 45, n. 5. It seems that in a "counteraction" as here, the same penalty was operative: the loser, whether plaintiff or defendant, had to pay the statutory penalty. On the basis of this passage and a report in a late lexicographer, scholars (e.g., Harrison 1971: 185) have claimed that the *epobelia* was paid to the opposing litigant; more recently, scholars have argued that it was paid to the Treasury (e.g., Whitehead 2002).

[80]Litigants were exempt from paying court fees (*prytaneia*) in cases of assault (at least at the end of the fifth century, Isoc. 20.2); legal historians explain that court fees are required in this instance (where the charge is likewise assault) because it is a "counteraction." See Harrison 1971: 92–94. No reasonable rationale has been offered for the nonexemption of a cross-action for assault. Possibly scholars have been wrong in assuming the continued existence of the exemption: the law may have changed since Isoc. 20.2 attested it.

them, how could they have received payment so quickly?) and that once again on that very day they had entered into the house—while I was paying the judgment penalty.

[DEPOSITIONS]

[67] Well then, judges, since they did nothing after I had ordered him to take care of the woman whom they had beaten and to call in a doctor for her, I myself brought in one whom I had used for many years and he treated her in her weakened state and I brought in witnesses to show them her condition. When I learned from the doctor that she would not live, I called in another set of witnesses, showed them her condition, and told them to look after her.[81] Well then, on the sixth day after these men came to the house, the nurse died. To prove that I'm telling the truth, the secretary will read you their testimony.

[DEPOSITION]

[68] Well then, after she died, I went to the Interpreters[82] to learn what I ought to do in these circumstances, and I explained

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[81] The speaker appears to be building a case against Theophemus, his companions, or both for the murder of his nurse; cf. 47.62. Why are there two different sets of witnesses here? Possibly the first set may have included slaves and female members of the household who would not be able to give testimony in court; and possibly the second set included free men. (Cf. Dem. 54.12, where the speaker, the plaintiff in a case of assault, maintains that he had nearly died after he was beaten and then has the depositions of his doctor and visitors read to the court.) The second set of witnesses in this speech would attest the nurse was dead—not necessarily an easy or self-evident observation; see Plato *Laws* 959a.

[82] The "Interpreters" (*exēgētai*) were expounders of religious law who offered advice to those asking about the proper procedure to follow in matters concerning death and pollution. They appear in fourth-century literature offering such advice four times (here; Plato *Euthyphro* 4a–e; Is. 8.39; and Theophrastus *Characters* 16.1) and often in later inscriptions and lexicographers. The passage here is of exceptional interest, since it shows the Interpreters marking a line between advice on religious matters and advice on legal matters.

to them everything that had happened: the arrival of these men and the loyalty of the woman, and how I kept her in the house and how she died on account of the small cup, because she wouldn't let go of it. And the Interpreters, upon hearing my story, asked me whether they should only explain religious requirements or should additionally give me advice. [**69**] When I answered, "Both responses," they said, "Well then, we'll explain to you the traditional rites, and we'll advise you of your own interests. First, if any relative of the woman is alive, he is to carry a spear at the time her corpse is carried out from the house and to make a proclamation at the tomb; then, he is to guard the tomb for three days.[83] And this is our advice to you: since you yourself weren't present but only your wife and children, and there are no other witnesses at your disposal, do not make a proclamation against anyone by name, but against the doers of the deed and the killers,[84] and after that, do not file a suit before the King Archon—[85] [70] for it's not even your task by law,[86] inasmuch as the woman is not a family relative of yours, nor yet is she your slave accord-

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[83]The actions specified here appear to be religious rather than legal requirements; this seems true of the proclamation (against the killer?) at the tomb, even if it is the same as the proclamation by kinsmen in the Agora (see 47.69n).

[84]Proclamation by kinsmen against the killer is mentioned at Ant. 6.35 and in the first law inserted at Dem. 43.57 (and probably in lines 20–21 of Dracon's homicide law, *IG* I³ 104 = Fornara 15B). The proclamation banned the killer "from the things specified in the laws" (*Ath. Pol.* 57.2), which included exclusion from the agora and sacrifices (Dem. 20.158). The ban may not have had legal force until the charge had been filed with the King Archon and he had made his proclamation (see Rhodes 1981: 641, citing Ant. 6.36–38).

[85]*Ath. Pol.* 57.2 reports that all private suits for homicide fell to the King Archon.

[86]Interpretation of this clause is significant for determining whether a killer could be pursued by nonrelatives. The words are ambiguous; Murray 1964 translates: "For that course is not open to you under the law . . ." (i.e., nonrelatives are not permitted by law to prosecute; similarly, Gernet: 1957: 222). My translation allows for an ambiguity in the law that might permit nonrelatives to prosecute a killer: nonrelatives are not required by law to prosecute, whereas relatives are. The question is controversial.

ing to your own statements, whereas the laws require the prosecution to be carried out by those who do have these relationships. So if, then, you swear at the Palladium[87] and your wife and children swear also and if you call down curses upon yourselves and your household,[88] you will lower yourself in the eyes of many men. Moreover, if the alleged killer is acquitted, you will seem to have sworn falsely, and if you convict him, he will hold a grudge against you. Instead of that, carry out the purificatory rites for yourself and your house, bear the disaster as patiently as you can, and if you like, exact vengeance in some other way."

[71] After I heard all this from the Interpreters and I had examined the laws of Dracon on the *stēlē*,[89] I consulted with friends about what I should do. As they gave me the same advice, I carried out the obligatory rites for my household and the advice of the Interpreters, but regarding actions that were not obligatory for me on the basis of the laws, I held my peace.[90] [72] For the law, judges, prescribes that relatives extending as far as children

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[87]For discussion of procedure, sites, and sources for the different homicide courts in Athens, see Boegehold 1995: 43–50. He offers a new and cogent argument that the Palladium that was used as a court was not (as scholars have previously held) the sanctuary of Athena Pallas and Zeus outside the city wall. There was another sanctuary of Athena near Phaleron called the Palladium because it housed the legendary cult statue of Athena (*FGrHist* 223 F 20). The Palladium heard cases in which the plea was involuntary homicide or planning homicide or in which the victim was a slave, a metic (as here), or a foreigner (Schol. Aes. 2.87).

[88]It seems that an oath preliminary to trial had to be sworn by the plaintiff and his family (see 47.72); possibly the same oath is referred to at Ant. 6.16. Gernet 1957: 250 suggests that the speaker will perjure himself if he swears since he would have had to affirm kinship to the victim in the oath.

[89]The "laws of Dracon" (who allegedly wrote down the laws of Athens in 621/0) refer to the laws "republished" on stone in 409/8; the stone inscribed with the homicide law was exhibited in front of the Royal Stoa and is preserved (*IG* I^3 104 = Fornara 15B). Scholars debate whether the preserved law represents Dracon's law, Solon's law, or some revision of the law in the late fifth century.

[90]I.e., as he was neither a kinsman of the nurse nor her master when she died, he had no obligation to pursue her killer; see 47.70n.

of cousins are to prosecute[91] (and kinship is to be defined in the oath), and if the victim is a slave, there are also to be denunciations (*episkēpseis*) for them.[92] The woman was in no way a family relative except insofar as she had been my nurse, nor again was she my slave. For she was set free by my father and lived apart and had a husband. [73] I would not have dared to tell you lies and taken an oath upon myself, my son and wife—not even if I knew for certain that I should convict these men. For I do not hate them so much as I do love myself. And so that you may have not only my word for this, I'll read you the law itself.

[LAW]

[74] While there are many reasons, judges, for you to consider the deposition manifestly false, I think it's the conduct of these men that permits you to know it best. For they imagined, judges, that if they were to seize a great many of my belongings as security for the judgment penalty, then I would be happy to release their witnesses from the charge of giving false testimony so as to get back my property. [75] And when I had asked Theophemus to defer the final day of payment, he was happy to oblige, so that I might be in default and so that he could carry off as much of my property as possible. And this is why he so innocently and promptly agreed to the delay: to inspire me with confidence and to conceal his scheming; for he thought the witnesses couldn't be released from the charge of giving false testimony by any means except by deceiving me, taking me in default, and carrying off as much of my property as possible, for he thought they would get from me not only all that they have but much more. [76] For in the meantime he kept waiting for me in the belief that I would not raise the money with any speed, desiring that the seizure of my property take place just when the trials for false witnessing

[91] The provision regarding the degree of kinship requisite for a killer's pursuer to make the proclamation appears in the re-publication of "Dracon's homicide law" (sources cited in 47.69n).

[92] The meaning is uncertain.

were about to take place.[93] And after I notified him to come and get the judgment money, he came and seized my furniture and house slaves and sheep instead of receiving the payment. My farm is near the Hippodrome, so he didn't have to go a great distance. [77] To prove that I'm telling the truth, let this be a sound proof for you: he got the money for the judgment penalty on the day after he seized the security. And yet how, unless the sum had been raised, could he have recovered the money so quickly—that is, 1,313 drachmas and 2 obols? And he didn't return to me the goods seized as security, but even now he keeps them as if I were in default. But to prove that I wasn't in default to him, please read the deposition and the law that makes all agreements between one man and another valid.[94] So, you see, I was no longer in default to him.

[LAW. DEPOSITION.]

[78] Well then, witnesses have testified that he made an agreement and postponed the final day of payment for me. And the man who was my colleague in the trierarchy has testified that I was serving as trierarch and that the ship was readied as the flagship for Alcimachos. Surely then I was not in default to him after he had postponed the day of payment for me, and still less so after I paid the full amount. But this man's greed, oh judges, is appalling when it comes to drachmas and obols. In fact, they knew well that if they were to surrender the woman for examination under torture, they would be shown up as having brought a false charge of assault, but if they didn't surrender her, even though the witnesses testified that Theophemus was ready to do that, they would be convicted of giving false testimony.

[79] I ask you, judges, if any of the men who served on the judging panel for that earlier trial happens to be in this court-

[93] Presumably the plural number of trials represents separate trials against Evergus and Mnesibulus.

[94] The agreement was reported in 47.50; for the validity of such agreements, see 42.12n.

room now,[95] use the same moral reasoning as you did on that occasion; and if the testimony then seemed to be trustworthy and I seemed to be avoiding the proof that may have emerged from the woman's testimony, so now, when they are shown to have given false testimony and refuse to hand over the woman, come to my aid; and if you were angry at me because I entered Theophemus' house to make a seizure, be angry at these men too because they entered my house. **[80]** And whereas I, under the compulsion of the laws and decrees, took precautions so as neither to intrude upon this man's father or mother nor to take anything that belonged to his brother but to enter only the place where Theophemus himself lived, and when I did not find him inside the house, I didn't clean out the place first and then leave.[96] Instead, I ordered someone to fetch him, and so in his presence rather than in his absence I seized security, and when it was taken from me, I surrendered it and went up to the Council who had authority in the matter, and when I denounced him [by an *eisangelia*] and won his conviction there in the Council, I was content to recover the equipment alone, and regarding the dispute over the blows, I was content to refer that to an arbitrator and to compromise on the penalty.

[81] I, then, was so moderate toward these men! Yet they were so brutish and ruthless that they intruded upon my wife and children,[97] even though they had sheep and house slaves in their keeping worth more than the sum they had been awarded in court and even though they had postponed the final day of payment,

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[95]For the allotment of judges to panels on the day of trial, see 47.17n. It is conceivable that some who had been allotted to hear the earlier trial (presumably 401 judges, since the claim was for over a thousand drachmas: *Ath. Pol.* 53.3) might have been allotted to hear this one as well; although the pool of judges was 6,000, that number may be an ideal—at any rate many fewer would show up for the allotment, especially on days when private (rather than public) cases were being tried, since fewer men would be empanelled.

[96]See 47.34–35.

[97]This is not quite true (cf. 47.56), but sufficient to arouse the court's indignation at the end of a speech.

and even though I had told them to come and get the judgment money as witnesses have testified. And after entering the house, they not only carried off the furniture but beat the nurse, an old woman—for the sake of a small cup! Moreover, they still have all this property and refuse to return it even though I have paid the award in full, 1,313 drachmas plus 2 obols. [**82**] And if any of you were in a state of ignorance and thought these men at the time of the earlier trial were innocent and peace loving, I would like to read you the depositions about them that have been furnished by their victims (for there isn't time left for me to give their full stories) so that when you have examined all the material, both the arguments I have raised and the testimony of witnesses, you may render, for your own sake, a verdict that is just and holy. Read the depositions.

[DEPOSITIONS]

48. AGAINST OLYMPIODORUS

INTRODUCTION

This short speech against Olympiodorus for damages[1] was written for a certain Callistratus[2] who was married to Olympiodorus' sister. Callistratus claims that he and Olympiodorus had made an agreement, sworn to and sealed before witnesses, and deposited with a third party named Androcleides: the men were to split the estate of Comon of the deme Halae, a kinsman who died rich and childless. Their enterprise (or conspiracy) met obstacles: other kinsmen filed claims for the estate and won it. The two men, however, via the law that allowed the reopening of a previously adjudicated estate, instituted a new hearing, each filing a separate claim and summoning the current heirs.[3] Olympiodorus won and refused to go halves with Callistratus. The suit for damages fell under the jurisdiction of the Forty and was first heard and prepared for trial before an official arbitrator; that trial took place in the late 340s, a year or two after the first adjudication of the estate (48.26). The speech is of interest for its depiction of inheritance strategies by a plaintiff who is a first-class scoundrel.

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[1]The designation of the lawsuit as one for damages is provided by the title; it was the remedy used for breach of contract, as in Dem. 56.

[2]Callistratus' name does not appear in the speech or its title; it has been preserved in the summary (called a *hypothesis*) written by Libanius, who had access to other materials and documents no longer preserved for us. He is probably not to be identified with anyone else with this name; see Davies 1971: 277.

[3]For the procedure, see the Introduction to this volume, IV.4.

Callistratus opens his speech with a disavowal of responsibility for the trial; he himself had offered to refer the dispute to men who were friendly to both but Olympiodorus refused; he now appeals to the judges to reconcile them, but if that is impossible, they should vote for the litigant who presents a just case (48.1–3). In the next segments of the speech, Callistratus treats three successive plans to obtain, retain, and recover Comon's estate.

Plan One: The Agreement to Go Halves and the Entry into Comon's Estate

Callistratus commences the narrative of the dispute with the immediate aftermath of Comon's death: he had called in his brother-in-law Olympiodorus to assist him and his wife with the funerary rites. Olympiodorus then claimed that his mother was related to the dead Comon, and that he, too, should receive a share of all his property. Discussion of the volatile matter was postponed while they performed the rites. Kinsmen then assembled to discuss claims to the estate. Instead of reporting the end of that meeting, the speaker next tells us that he and Olympiodorus decided to split the estate between themselves and not to file claims against one another. Planning to stick together both now and in the future, the men drew up an agreement and swore oaths to confirm it: they would divide all the visible property, neither man would take advantage of the other in regard to Comon's estate, they would make a joint inquiry into the rest of it, and they would plan with one another as need arose. As witnesses, they have their kinsmen and Androcleides, the man with whom they deposited the agreement (48.4–11).

Callistratus next tells what happened when the two men took possession of the estate. He had divided it and given first choice to his brother-in-law: Olympiodorus chose the smaller house and the drug-grinding slaves;[4] he himself took Comon's house and the sackcloth weavers. One of Olympiodorus' new slaves, Moschion, confessed that he had stolen a thousand drachmas from Comon;

[4]See 48.12n.

he returned the unspent portion, about six hundred drachmas, and the two men split the cash. Subsequently Olympiodorus questioned Moschion again, on his own, and the slave admitted he had also stolen seventy minas (= 7,000 drachmas) from Comon. He gave the sum to Olympiodorus, but the latter withheld it from Callistratus. At the same time, other kinsmen began filing claims for Comon's estate, including Callippus (the speaker's half-brother), who filed for half of it (48.12–21).

Plan Two: Silent Teammates for the First Adjudication of the Estate

The two conspirators put aside their differences and made a new plan for the upcoming hearing. Olympiodorus would make a claim for the whole estate, and Callistratus, for half. A slew of different kinsmen, however, filed claims. Olympiodorus and Callistratus now needed a postponement to prepare their cases. Olympiodorus had by chance been called up for military service in Acarnania and must leave the country—an excellent excuse for postponement. The day for the hearing arrived; Callistratus duly swore an oath on the grounds of his brother-in-law's military service; the rival claimants swore a counter-oath, villifying Olympiodorus. The judges voted: Olympiodorus' excuse was not accepted, and his name was struck from the list of claimants. Callistratus, abiding by his agreement not to take advantage of his co-conspirator, withdrew his claim as well. The hearing went forward, and the Archon awarded the estate to rivals who took over the property; Olympiodorus, however, managed to keep the seventy minas (48.22–28).

Plan Three: Silent Teammates for the Second Adjudication of the Estate

After Olympiodorus returned from abroad, he and Callistratus formed another plan to win back the estate. The two men would reopen the case by summoning the men who had been awarded the estate; each would file separate claims, Olympiodorus for the entire estate and Callistratus for half, since his half-brother Cal-

lippus was also filing for half. If Olympiodorus succeeded, the speaker was to get his share from him; if the speaker succeeded, Olympiodorus was to get a share from him. Olympiodorus was awarded the estate but refused to go halves (48.29–30).

The Remainder of the Speech

Callistratus now recapitulates his grievances against his brother-in-law (48.33–34) and then addresses the excuses that Olympiodorus had made for refusing to split the estate, the weightiest one being that Callistratus himself violated the agreement, caused him suffering, and opposed him in speech and action. Callistratus refutes those claims (48.35–45) and adds that Olympiodorus never rescinded the agreement, which was still deposited with Androcleides and so is operative even now (48.46–47); moreover, Olympiodorus refused a challenge to copy the agreement jointly and present it to the court (48.48–51).

The speaker next offers an explanation for Olympiodorus' conduct: he is being influenced by a courtesan with expensive tastes whom he has installed in his house and who has driven him further along the road to madness (48.51–56). Finally, the speaker, with his wife and daughter, beseeches the judges to alter Olympiodorus' conduct, but if that is not possible, then to vote for what is most fair and just (48.57–58).

Discussion

The speech illustrates strategies for acquiring an inheritance for kinsmen who are neither direct heirs, heirs by will, or adoptees. The two men first entered the estate without having filed a claim for it—a bold step since entry without application to the Archon was the right of direct heirs (or sons adopted *inter vivos*) and not intestate successors.[5] Perhaps the "bold step" had been allowed by kinsmen (see below). Only when claims by various kinsmen were filed with the Archon did Callistratus and Olympiodorus also file

[5]The rule was not always observed; see 44.32 and Is. 9.3 and 10.24; for the rule, see the Introduction to this volume, IV.1.

claims and the first adjudication (a *diadikasia*) took place.[6] Subsequently, when the two men tried to win back the estate, they summoned the men who had been awarded it by the court and so initiated a new hearing (also called a *diadikasia* but differing from the first because of its initiation through a summons).[7]

The agreement between the two men is of interest for both its form and content. As to its form, it follows the general pattern for agreements (*homologiai*) found elsewhere in the orators: two men willingly give their consent to do something before witnesses; the provisions are written; it is finalized with an oath and deposited with a third party from whom it cannot be removed (e.g., for the purpose of exhibiting it to the court) except by common consent. The lawful validity of the agreement appears to reside in the mutuality of voluntary consent; the presence of witnesses and the written documentation of the agreement are means for proving its existence rather than essential elements of it.[8] The fact that the specific content of this agreement appears to have had an illicit end—namely, the blocking of the award of the estate to other claimants through collusion at the hearing—does not appear to nullify its legitimacy:[9] its breaching is still protected by law.[10] The speech, then, offers an example of a suit for damages following the nonperformance of a contractual agreement. We do not know how much Callistratus claimed as damage. Although he claims that he is owed half the estate, his attention appears riveted upon

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[6]See the Introduction to this volume, IV.2.

[7]See the Introduction to this volume, IV.4.

[8]Lipsius 1905–1915: 684–687; MacDowell 1978: 140, 152.

[9]See Gernet 1957: 228–229. Some disagree: Lipsius 1905–1915: 687–688, e.g., thinks the contents of the agreement must accord with laws and morality; his evidence (Arist. *Rhetoric* 1.15.1375b9 and Plato *Laws* 11.920d) is not persuasive; see Aes. 1.160–165.

[10]Athenian magistrates ostensibly had the right to turn down cases brought before them. Accordingly, one could argue that the magistrates might have turned down this particular case if they thought the agreement was not protected by law. A magistrate, however, might be reluctant to turn down cases, fearing charges of wrongdoing brought by disgruntled would-be litigants at the end of his term of office (see *Ath. Pol.* 48.4).

the seventy minas (7,000 drachmas) that Olympiodorus extorted from Moschion (see esp. 48.33–34).

Callistratus, the speaker, is a remarkable knave. He not only unabashedly presents the judges with an agreement that aims to block the claims of other kinsmen to Comon's estate, he also speaks casually of the laws, sometimes as if they were mere obstacles of necessity, like unavoidable puddles in a road, sometimes as if they were common thoroughfares that, unfortunately, anyone may use. A suspicion that other kinsmen might file claims for the estate, he tells the judges, prompted the agreement between himself and Olympiodorus: "There was, for instance, my brother born of the same father but not of the same mother, who was then away from home, and if anyone else wanted to file a claim, there was no way for us to prevent it; the laws, after all, permit anyone who wants to lay claim to an estate" (48.10). And later, when the plan to postpone the day of trial failed, he informs the judges that "the Archon awarded Comon's estate to our rivals, for the laws compelled him to do this" (48.26)—as if the Archon would have acted otherwise and perhaps with greater justice, if only he weren't compelled to obey the laws!

The speechwriter has made no effort, or else entirely lacked the expertise, to elucidate the legitimacy of the speaker's and Olympiodorus' claims to Comon's estate. How, for example, and how closely, were these two men related to Comon?[11] The speechwriter has provided no clues. Another question: could Callistratus really have been ignorant of Olympiodorus' relationship to Comon? That seems hardly likely—after all, he was married to his sister. Callistratus speaks of a meeting of relatives after the funerary rites had been carried out (48.7), during which the kinsmen allegedly discussed Olympiodorus' claim. Such a meeting is likely enough

[11] The speaker is related to Comon through his father (his half-brother who also puts in a claim has the same father as the speaker: 48.10, 20, 22, and 30). Olympiodorus is related to the deceased through his mother; since the speaker conspires with him for the inheritance, he, too, must be related on the paternal side—possibly Olympiodorus' mother was a daughter of Comon's brother. For the principles of intestate succession, see the Introduction to this volume, V.

after the death of a rich and childless relative (see, e.g., 44.17–19). The kinsmen of the dead Comon may very well have met to discuss various claims; presumably they would have been interested in placing responsible kinsmen quickly in Comon's houses: he owned two "workshops" and had plenty of slaves to run them—surely they would need oversight. For kinsmen "to enter" the estate immediately instead of waiting for a courtroom decision was surely advantageous; if other kinsmen wanted to contest the estate, they could do that after the "chosen kinsmen" had entered and retrieved whatever the "Moschions" (or cupidinous kinsmen) had stolen.[12]

The agreement between the two men to carry on against all latecomers, however, is their own doing. It is a pity the agreement was not put into evidence; no doubt Callistratus would equally have declined a challenge on that score. Some further speculation might be useful here, in the interest of suggesting not so obvious reasons for silence and knavery. Observe that the main characters in the narrative are closely related: Callistratus and his paternal half-brother Callippus, Callistratus' wife and Olympiodorus. Callistratus' daughter is possibly an *epiklēros* ("heiress").[13] Could she have been part of the agreement? That is, did Callistratus agree to go halves with Olympiodorus, if he would marry his daughter? In that case, Callistratus' property (augmented with half of Comon's), upon his death, would be Olympiodorus' to use in his lifetime, but would revert to the children of the *epiklēros* when they came of age. Olympiodorus backs out, however: he does not marry Callistratus' daughter but instead, purchases a courtesan!

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[12]Concern over thievery from the tangible property of deceased kin appears in Menander's comedy *Aspis*, where Smicrines, thinking his brother is fatally ill, worries that the womenfolk are carrying off property through the waterpipes (465–467); see the Introduction to Dem. 42 at n. 21.

[13]In 48.8, Callistratus speaks of Olympiodorus as the uncle of "my children," but at the end of the speech, the only family members he mentions are his wife and daughter (48.54–58). If the latter is not an *epiklēros* (and if she is one among a brood of *epiklēroi*), then Callistratus may still have "bartered" her marriage to her uncle, but she will not have been so valuable an asset.

Why? Callistratus acted against the agreement, he claims. Could it be that Callistratus double-crossed him? When Olympiodorus is called up for military service and his claim is struck from the list of claimants, Callistratus withdraws his claim; Callippus, however, does not. Did he change his claim for half the estate to the whole of it, with Callistratus as a silent partner? There may be more shenanigans here than meet the eye. And Callistratus will keep the "selling" of his daughter out of the picture.

Date and Authorship

One detail allows us to date the trial: the speaker tells us that Pythodotus was the Archon who presided over the first adjudication (48.26). Pythodotus' archon year is 343/2. The current trial for damages will have taken place a year or two later, leaving time for Olympiodorus' military service and the second adjudication of Comon's estate.

While no ancient authority has questioned Demosthenes' authorship of the speech, modern scholars, although not with unanimity, have rejected it on the grounds of the immorality exuded by the plaintiff, the implausibility and naïveté of argumentation, and its tedious style. These grounds are hardly sufficient for rejecting Demosthenes' authorship—they *could* amount to "*ethos*-coloring" by a gifted logographer. But "implausibility" and "naïveté," once depicted in more particular terms, does militate against accepting Demosthenes' authorship: the argumentation is implausible and naïve because it demonstrates no legal knowledge or expertise in intestate inheritance. It is difficult to imagine that Demosthenes would have written this speech without explaining and providing witnesses for the relationship of the plaintiff and defendant to the deceased—or without an excuse for not doing so—for example, the extreme old age of Comon and the deaths, long ago, of his siblings, and more recently, of their children. Additionally, scholars have pointed out linguistic usages that are both "un-Demosthenic" and similar to those found in Speech 43. The speech could not have been composed by Demosthenes.[14]

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[14] See further Blass 1893: 559–562.

48. AGAINST OLYMPIODORUS, AN ACTION FOR DAMAGES

[1] It is perhaps necessary, judges, even for men who lack experience and talent in speaking, to go to court when they are wronged by someone, especially by men who ought to be the last to do so; this is the case with me right now. I didn't want, judges, to sue Olympiodorus; he is a relative, and I am married to his sister; yet I have been forced to act because of the considerable wrongs he's made me suffer. [2] If, then, I were doing any of this, oh judges, without a real complaint against him and I were falsely charging Olympiodorus, or if I were unwilling to refer the matters under dispute to friends of mine and of Olympiodorus, or if I were avoiding any other just course of action, be assured that I would be ashamed and would think myself a despicable human being. But as it is, I have suffered terrible losses at the hands of Olympiodorus. I haven't fled from any mediator, and I swear by Zeus most high, it's not willingly but as unwillingly as can be that I've been compelled by the defendant to bring this case. [3] Accordingly, I beg you, judges, after you've heard the two of us and you yourselves have become the examiners of the dispute,[15] first and foremost, reconcile us[16] and, when you send us away, be benefactors to the two of us; but if you should not achieve that feat, then of the remaining alternatives, please cast your vote in favor of the man who pleads a just cause.

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[15]The Greek word for "examiners" is *dokimastai*; it is used in the Athenian law on silver coinage of 375/4 (SEG 72 = Rhodes and Osborne 2003: no. 25), in which the "examiners" are public slaves who inspect silver coins (esp. of foreigners) and test for counterfeits; they are both "examiners" and "approvers." The term elsewhere in prose literature sometimes means "examiner" (Aes. 2.146), sometimes "approver" (Dem. 21.127), and sometimes both (Lys. 26.16).

[16]That reconciliation should be the end of a lawsuit heard even by a small panel of judges (e.g., two hundred) is difficult to imagine. The protocols of such a reconciliation are unknown, but there is evidence for at least one having taken place, Is. 5.17–18; see Wyse 1904: 426–427 and Scafuro 1997: 35 n. 38. Callistratus will return to the notion of reconciliation at the end of the speech.

To start off then, the secretary will read you depositions to prove that it's not I who am responsible for our entering court, but the defendant himself. [*To the secretary*] Read the depositions.[17]

DEPOSITIONS

[4] To prove, oh judges, that I offered Olympiodorus appropriate and sensible terms, the men who were present at that time have now given their testimony. Since he was unwilling to carry out any just course of action, I must tell you about the wrongs I'm suffering at the hands of Olympiodorus. It's no long story. [5] Comon of Halae, judges, was our kinsman. This Comon died childless after a very short illness, but his life had been a long one, and he was quite old when he died. When I realized he wouldn't recover, I sent for Olympiodorus here to come and join us in attending to all that was called for.[18] And Olympiodorus here, oh judges, came to me and my wife, who is also his sister, and he managed everything together with us. [6] While we were engaged in these activities, Olympiodorus here suddenly tells me a story that his mother, too, was related to the deceased Comon and that he, too, had the right to have his share of all the property that Comon left behind.[19] Now as I was well aware, judges, that he was lying and taking in hand a shameless project and that there was no closer kinsman to Comon than myself, I was as angry as could

[17]The insertion of such "character testimony" at the opening of a speech is unique. The testimony is not preserved; since the speaker does not mention that Olympiodorus declined a challenge to submit the dispute to friends, it seems unlikely that Callistratus' pressuring of Olympiodorus for amicable out-of-court settlement took the form of a challenge to do so.

[18]By inviting his kinsman to share in "all that was called for," i.e., the "funerary rites" so designated in 48.6, 7, and 12 (lit., "the customary things"), he implicitly recognizes Olympiodorus' right to inherit (cf. Is. 8.21–27 and Wyse 1904: 604). Funerary rites would include not only the cleaning, dressing, and laying out of the corpse but also burial, purification of the house of the deceased, and ceremonies on the third and ninth day (Is. 2.37).

[19]Olympiodorus' relationship to Comon can be no surprise to the speaker since he is married to Olympiodorus' sister; see the Speech Introduction, n. 11.

be at first and provoked by the impudence of the tale; then I reflected that it wasn't an appropriate occasion for anger, and I answered that for the present, the proper course was to bury the dead man and carry out the other funerary rites; after we had taken care of all these duties, that would be the time for us to talk. [7] And he, oh judges, agreed to this and said I spoke for the best. Then, after we had tidied up matters and carried out all the rites, we had time to summon all the kinsmen, and we began discussing among ourselves Olympiodorus' claim. As for all those details over which we held different opinions from one another during our discussion about the inheritance—why should I bore you or myself by repeating them now? [8] The end point, however, you must hear: for I recognized his claim and he recognized mine, that each of us should take one-half of the estate that Comon left behind and that there should be an end to acrimony.[20] I preferred, judges, to give him a share of the estate of my own volition rather than to run the risk of entering into a courtroom dispute against this man who is a kinsman and to speak unpleasantly to him since he is my wife's brother and my children's uncle and, in turn, to hear unpleasant words from him.[21] [9] Reflecting upon all this potential for trouble, I compromised with him.

After this, we wrote up the agreement between ourselves over all the matters in dispute; we also swore powerful oaths to one another to divide all the visible property,[22] fairly and squarely, without one of us taking any advantage of the other in regard to

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[20]It is unclear exactly how the decision was reached. Since there was no direct heir, the kinsmen might agree upon an heir to adopt to the deceased; but agreeing to a division like this seems improbable unless Callistratus and Olympiodorus had very strong claims to the estate; for speculation, see the Speech Introduction at nn. 11–12.

[21]The risks for the speaker or any claimant were even greater: aside from risking the loss of the case and the estate, there may have been the risk of depositing a fee, equal to one-tenth the value of the estate, that would be forfeited if the claimant lost; see the Introduction to this volume at nn. 44–46.

[22]"Visible property" here includes real estate, slaves, and (unusually) cash in the bank (see 48.12–13 and cf. 45.66n, where cash in the bank is "invisible").

Comon's estate, to make a joint inquiry into all the rest of the estate,[23] and to plan with one another if anything else should ever be necessary. [10] For we suspected, judges, that some of Comon's other kinsmen would also come forward to dispute our claims. There was, for instance, my brother born of the same father but not of the same mother, who was then away from home, and if anyone else wanted to file a claim, there was no way for us to prevent it; the laws, after all, permit anyone who wants to lay claim to an estate. So, foreseeing all these eventualities, we drafted the agreement and swore oaths to prevent either of us from doing anything at all on his own, willingly or otherwise, and instead to do everything together, by mutual agreement.[24] [11] First of all, our witnesses to the agreement were the gods by whom we swore the oath to one another, and also our own kinsmen, and then Androcleides of the deme Acharnae with whom we deposited it. Now, I wish, judges, to read you both the law according to which we wrote the agreement between ourselves and the deposition of the man who has the agreement in his keeping. [*To the secretary*] Read the law first.[25]

[LAW]

Now read Androcleides' deposition.[26]

[DEPOSITION]

[12] After we swore to one another and the agreement was deposited with Androcleides, I divided the estate, judges, into two

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[23]For "searching" an estate after the death of its owner, see Dem. 40.14–15 and 45.28.

[24]The terms of the agreement (and cf. below, 48.54) between the two men seem to contain all the features mentioned in agreements elsewhere in the orators that create a contractual obligation between the parties. Witnesses may not have been necessary except to guarantee the terms of the contract against falsification or misrepresentation (Lipsius 1905–1915: 685).

[25]For the law concerning agreements, see Dem. 42.12n.

[26]Cf. Dem. 35.14, where a deposition from the man in custody of an agreement is inserted into the speech.

portions. Now one portion consisted of the house in which Comon himself used to live and the slaves who weave sackcloth, and the other portion consisted of a second house and the slaves who grind drugs.[27] Almost all the ready money that Comon left behind at Heracleides' bank had been spent[28] on the burial and funerary rites and on building the tomb. [13] After dividing the property into two portions, I let Olympiodorus choose whichever of the portions he preferred,[29] and he chose the slaves who grind drugs and the smaller house; I took the weavers of sackcloth and the other house. That's what each of us took into possession.[30] [14] In the portion that belonged to Olympiodorus here, there was a grinder whom Comon used to regard as especially loyal to him; the fellow's name is Moschion. This slave knew practically everything that belonged to Comon and, in particular, where the money was that was stored inside for Comon.[31] [15] And Comon, who was rather old at the time and had put his trust in the man, hadn't noticed that this slave Moschion was filching away the money. First, he stole a thousand drachmas, which were stored somewhere apart from the rest of the money, and later, another seventy minas.[32] This he managed without Comon's knowing it. And the slave held all this money in his possession.

[16] Now, a short time after we had divided the property, judges, we had some suspicious intuition about this money and so Olympiodorus and I decided to question the fellow under tor-

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[27] Comon's wealth appears to have been "industrial" for the most part; the "workshops" were in Piraeus (48.27), and the slaves worked in the same houses in which their proprietors lived. See Finley 1985 [1952]: 65–68. Presumably the drugs ground by the slaves were medicinal.

[28] Heracleides was a well-known banker who is mentioned in Dem. 33.7 and 9.

[29] The method of division is similar to that in 36.11.

[30] By law, only direct heirs could enter an estate without applying to the Archon for a hearing; see the Speech Introduction at nn. 5 and 11.

[31] Cf. Dem. 27.10: both Comon and Demosthenes' father kept money in the bank as well as at home—in fact, they each had at home the same sum, 80 minas (8,000 drachmas or 1 talent, 2,000 drachmas).

[32] Seventy minas = 7,000 drachmas (or 1 talent, 1,000 drachmas), a very large sum.

ture. And the fellow, judges, confessed of his own accord before being tortured that he had filched away a thousand drachmas from Comon and that he had in his keeping all that had not been spent. But he said nothing on that occasion about the larger sum. [17] He paid back about six hundred drachmas. And of the sum that the slave returned, I took half and Olympiodorus here took half, fairly and squarely[33] in accordance with the oaths we had sworn and the agreement that was deposited with Androcleides.

[18] Not long afterwards, because of that intuition we had had about the slave regarding the money, Olympiodorus bound the fellow and interrogated him on his own without summoning me, although he had sworn to make joint inquiry and to act together with me in everything. And the fellow, judges, under the duress of torture, made another confession that he had also taken and filched away the seventy minas from Comon, and he handed over this sum in its entirety to Olympiodorus here. [19] Now I thought, judges, after I had learned about the torture of the fellow and the recovery of the money, that the defendant would give half the amount to me, just as on the earlier occasion he had given me half of the thousand drachmas. For the moment, I didn't in the least trouble him, thinking that he would come round and arrange matters both for me and for him, so that each of us would have his due according to the oaths and agreement we made to split equally all that Comon had left behind; [20] but when he let time pass and did nothing, I took up the subject with Olympiodorus here and demanded that I get my share of the money. Olympiodorus, however, was forever making excuses and creating delays.[34] Moreover, it was at this time that some others filed claims for Comon's estate, and Callippus my brother by the same father had returned home from his trip abroad. [21] He, too, immediately filed a claim for half the estate, and this, too, provided an excuse for Olympiodorus not to pay the money to me, since many persons

[33]The speaker uses the jingly phrase three times (48.9, 17, and 30); it is perhaps most superfluous here.

[34]Callistratus later mentions (48.34) that he issued a challenge to Olympiodorus about this matter.

were filing claims, and he said I ought to wait until the hearings were over. And I had to concede this, and concede I did.

[22] After this, Olympiodorus here and I worked out a plan together, just as we had sworn to do, how we would most advantageously and with the least risk deal with the claimants. We decided, judges, that Olympiodorus here should put in a claim for the whole inheritance and that I should do so for half, since Callippus my brother was also claiming only a half. [23] And after all the claims had been examined in the presence of the Archon and the moment had arrived for pleading the case in court,[35] Olympiodorus here and I were utterly unprepared for the trial that was all but underway since it seemed that all of a sudden the claimants had turned out in droves. In these circumstances we considered together whether a postponement could somehow be arranged for the present, so we might prepare for the hearing without undue haste. [24] And by some piece of luck, you were persuaded by the politicians to send troops into Acarnania,[36] and Olympiodorus here was obliged to serve in the army, and he went off with the others on campaign. The finest excuse for a postponement, so we thought, had just fallen into our laps: Olympiodorus was to be out of the country on a military expedition for the state! [25] And when the Archon summoned all the claimants to court as the law prescribes, I swore an oath requesting postponement, on the grounds that Olympiodorus here was absent on a military expedition for the state.[37] After this oath had been sworn, the rival claimants swore a counter-oath, and by slandering Olympiodorus and by having the advantage of speaking after me, they convinced the judges to vote that he was absent because of the hearing and not for the state.

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[35]Cases arising over disputed inheritances were overseen by the Archon who conducted the preliminary examination (*anakrisis*) and then introduced the case into court; see the Introduction to this volume, IV.2.a.

[36]Callistratus addresses the judges as if they had been the members of the Assembly who had voted to send troops to Acarnania (a state north of the Gulf of Corinth).

[37]Regarding the procedure for postponement on day of trial (oath, counter-oath, vote of the judges), see 39.37n and 47.39n.

[26] After the judges had voted, the Archon Pythodotus,[38] as the law prescribes, struck out Olympiodorus' claim. When that happened, I, too, had to abandon my claim for half the estate. Under these circumstances, the Archon awarded Comon's estate to our rivals, for the laws compelled him to do this. [27] After the decision had been made, the successful claimants immediately went to Piraeus and began to take all that each of us had received in the division. Now since I was at home, I surrendered the property to them (for one had to obey the laws), but as for Olympiodorus' property, since he was out of the country, they took and carried away everything,[39] except for the money that he had in his keeping from that fellow the slave whom he had interrogated under torture—for they had no way to get at that.

[28] This happened while Olympiodorus was out of the country, and this is the fruit I reaped from my association with him. But after he returned home along with the other soldiers, Olympiodorus, oh judges, took great umbrage at the turn of events and thought he had suffered a terrible outrage. But after his anger subsided, we considered the matter once again, and Olympiodorus and I together worked out a plan for retrieving some of the property. [29] After some deliberation, we decided to summon to court, as the law allows, the men who had been awarded the estate. Given the circumstances, it seemed safest for us not to risk acting together as a team against the rival claimants but, instead, for each of us to act separately: Olympiodorus would file a claim for the entire estate as he had before and would present the case by himself and I would file a claim for half the estate since Callippus my brother was also making a claim for only a half.[40] [30] In this way, if this Olympiodorus here should succeed at the hearing, I, in accordance with the agreement and the oaths might again recover my share from him, and if he should fail and the

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[38]Pythodotus was Archon in 343/2.

[39]Presumably they took away the slaves (48.12), the most obvious moveable acquisitions in the inheritance.

[40]The filing of separate claims by two men might suggest that the previous agreement had been nullified (but see 48.43n); Olympiodorus probably could have claimed so on this basis.

judges should vote differently, he might get his share from me[41] fairly and squarely just as we had sworn with one another and made our agreement. After we had deliberated on these matters and decided that this strategy was the safest for Olympiodorus and me, all those who were in possession of Comon's estate were summoned as the law prescribes. [*To the secretary*] Please read the law in accordance with which the summons was made.[42]

[LAW]

[**31**] It was in accordance with this law, judges, that the summons was made and that we filed our counterclaims,[43] following the strategy decided upon by Olympiodorus. And after this, the Archon conducted the preliminary examination for all the claimants, and after that examination, he introduced the case into court. And Olympiodorus here presented his claim first, and he said whatever he wanted, and furnished whatever depositions he fancied; and I, judges, sat in silence on the other platform.[44] Since the hearing had been arranged this way, he easily carried the day. [**32**] When his victory was complete and we had accomplished all we wanted in the courtroom, and after he got back from the claimants who had been awarded the estate in the earlier hearing all that they had taken from us, indeed, having all this in his possession—plus the money he got from the slave who had been interrogated under torture—he utterly refused to act fairly by me. Instead, he keeps everything himself even though he

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[41]I have departed from Rennie's edition here, accepting Gernet's emendation to *meros* ("share") for the codices' reading *ta merē* ("shares").

[42]The law is cited and read to the court at Dem. 43.16. See the Introduction to this volume at nn. 51 and 53, and Dem. 43.16nn.

[43]Olympiodorus and the speaker, because they are each making separate claims to the estate, must issue separate summonses to the heirs who won possession of Comon's estate; for the expression "filed our counterclaims," see the Introduction to this volume at n. 52.

[44]Each of the parties had his own "platform" (*bēma*; cf. Aes. 3.207). A separate "platform" (likewise *bēma*) was reserved for litigants when they spoke (Aes. 3.165).

swore an oath and made an agreement with me in very truth to go halves. And the agreement is still even now in the safekeeping of Androcleides, and he has himself given testimony before you. [**33**] Though I also want to furnish depositions to prove all my other statements, first and foremost, I want to prove at the outset that this man and I decided the claims for our own cases and made an equal division, each of us, of the visible property that Comon left behind. [*To the secretary*] First, please, take this deposition, and then read all the rest.

[DEPOSITION]

[**34**] Now, please take the challenge that I issued him about the money he took from the slave who was interrogated under torture.

[CHALLENGE]

Read also the other deposition, that after our rivals were awarded the estate, they in turn took everything that we had in our possession, except for the money that Olympiodorus had from the slave who was interrogated under torture.

[DEPOSITION]

[**35**] Now, judges, you have heard in my speech and in the depositions of witnesses the way in which Olympiodorus and I originally divided the visible property of Comon for ourselves, and that he got the money from that fellow the slave, and that the successful claimants at the first hearing got all that we had in our possession until this man won his claim at a second hearing in the courtroom. [**36**] As for the excuses he makes for not paying me back and for refusing to do anything just by me, pay attention to them now, judges, so that the politicians[45] whom the

[45] The "politicians" (*rhētores*) are speakers at meetings of the Council and Assembly; their influence might be utilized in private matters as advocates or witnesses.

defendant has prepared to speak against me will not immediately deceive you. First, he never says the same thing but whatever comes into his head on any occasion: he goes about creating absurd excuses, suspicions, false charges—he's been a dishonest man throughout the entire business. [37] Almost everybody has heard him telling stories—some, that he got no money at all from the fellow—but whenever he is refuted on this point, he changes and says that it's from his own slave that he has the money[46] and he'll give me no share of that or of anything else Comon left behind. [38] And whenever any of our close acquaintances ask him, why it is he won't pay me after he has sworn an oath to share the property and when even now the agreement is in safekeeping, he answers that I have violated the agreement and that he has suffered terribly at my hands, and says that I have persistently opposed him in speech and action. These are the excuses he makes! [39] This man's statements, judges, consist of fabricated insinuations, dishonest excuses, and swindling tricks, all aimed at robbing me of what he should be giving back to me; but my statement to you, that this man is lying, won't be an empty insinuation; I'll demonstrate clearly this man's impudence with proofs that are true and evident to all and with witnesses to attest every point.

[40] First, then, judges, I say that this is the reason he refused to refer our dispute to relatives and close friends of his and mine, men who knew precisely every detail of the business and who had followed it from the beginning: he *knew* he would be refuted by them immediately if he told any lie, whereas now perhaps he thinks he can lie to you without being caught! [41] Once again I say the idea that "I acted against your interests," Olympiodorus, is inconsistent with my sharing with you the occasional necessary

[46]Surely the 7,000 drachmas are at the heart of the matter; when first Olympiodorus and the speaker took possession of the estate by virtue of their agreement, Olympiodorus had extracted the money from the slave, did not split it with the speaker (contrary to the agreement), and did not return it when the new heirs took over the estate (48.18–20, 27). Now Olympiodorus apparently claims that the "visible goods" have been awarded him by the court—a sore point for the speaker!

cost or my abandoning my claim voluntarily when you were out of the country—especially after your claim had been stricken out of court since it seemed that your absence was due to the hearing rather than to your service to the state. For I could have put in a claim for myself for half the estate—no one at all would have opposed my doing so; the rival claimants themselves would have conceded this—[**42**] but had I done so, I would've immediately violated my oath: for I had sworn and made an agreement with you to do everything jointly, whatever should seem the best course of action for you and me after deliberating together. The excuses and charges you use when refusing to act fairly by me are therefore utterly absurd. [**43**] What's more, do you think that during the last hearing over the estate I would've permitted you, Olympiodorus, either to speak so "aimlessly" as you did to the judges, or so "aimlessly" to furnish depositions about the matters you did unless I was on your side in the hearing?[47] [**44**] This fellow, oh judges, said whatever he liked about everything in the courtroom, and in particular he misrepresented to the judges the house I had received as my share of the property, saying that I had *rented* it from him, and the money I received, half of the thousand drachmas from the slave, saying that I had *borrowed* it from him! And not only did he say this, he also supplied depositions for it. I didn't offer even a syllable in opposition; not a man alive heard a word from me the whole time he was presenting his case—neither a shout nor a whimper—but I agreed that every word he chose to say was true. [*To Olympiodorus*] Yes, I agreed since I was on the same team as you during the trial, just as the two of us had planned. [**45**] For if my statements aren't true, why didn't I make a formal objection at that time against the witnesses who were giving this

[47] He says "aimlessly" cynically: presumably Olympiodorus told him that he would present his case with an air of nonchalance but plotted his case and witness statements carefully. Though the speaker realized that Olympiodorus was presenting a winning case, he didn't stop him by making a formal objection to the witness statements before the judges voted (see the next note), which suggests he thought the agreement was still in effect. This, at any rate, is what the speaker would like the judges to believe now.

testimony[48] instead of keeping completely still? Or why, Olympiodorus, didn't you ever file a suit against me to recover rent for the house that you said you leased to me as your own property, or why wasn't there a suit to recover the money that you told the judges you gave me on loan—why didn't you proceed with these suits? How, then, could a man be better shown up as lying and as making contradictory statements and as making events that never took place the basis for accusations?

[**46**] But here, judges, is the most decisive proof of all by which you, too, will know this man is dishonest and greedy: for if there were a grain of truth in what he says, he ought to have stated it and tried to prove it before the trial took place and before he tested the judges to see what verdict they would give; and he ought to have called in a good many witnesses and demanded that the agreement be taken from Androcleides on the grounds that I was violating it and acting against his interest and that the agreement between us was no longer operative; moreover, he ought to have made a solemn protest to Androcleides who has the agreement in his keeping that he no longer had anything to do with this agreement.[49] [47] These are the things he ought to have done, judges, if indeed there were a grain of truth in what he says: he ought to have gone to Androcleides to make a solemn protest both alone and with many witnesses so that many people would be privy to his change of heart. To prove that he never carried out any of

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[48]The "formal objection" (*episkēpsis*) is the first step whereby a disgruntled litigant starts up a suit for false witnessing; see the Introduction to Dem. 45, n. 4.

[49]Gernet 1957: 244 n. 3 thinks that the "solemn protest" (*diamartyria*; cf. Dem. 33.20 and 44.37) was an objection, with or without witnesses and without any juridical weight, but which, as a survival of a traditional practice, could be employed, especially to denounce an agreement or an arbitration—or what appears to be an unlawful act. The developed "solemn protest" in the fourth century, on the other hand, was primarily used in inheritance disputes to state a fact regarding a putative heir that would at the same time effect the latter's entry to the estate and stop an adjudication hearing from taking place (see the Introduction to this volume, IV.3).

these actions, the secretary will read you the testimony of Androcleides himself, the man with whom the agreement is deposited. [*To the secretary*] Read the deposition.

[DEPOSITION]

[48] Now, judges, consider another thing he did: I issued him a challenge and asked him to accompany me to the house of Androcleides with whom the agreement is deposited, and jointly to make a copy of the agreement and seal it up once again, and to put the copy into the *echinos* so there could be no suspicion and you, after hearing everything fairly and squarely, could vote whatever should seem to you most just.[50] **[49]** But when I issued him this challenge, he refused to do any of these things; instead, he has used all his wit to prevent you from hearing the agreement from documents copied by the two of us.[51] And to prove that I issued him this challenge, the secretary will read you the testimony of the men before whom I issued it. [*To the secretary*] Read the deposition.

[DEPOSITION]

[50] Could it be more clear that he doesn't want to do anything just by me but thinks he will rob me of what I should properly get? He makes excuses and brings charges, and when it comes to the agreement that he says I breached, he thought you shouldn't

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[50]The speaker is referring to the period before the current trial (for damages), which was under the jurisdiction of the Forty, when the two litigants were undergoing official arbitration. It would be during this hearing that documents such as challenges would be cast into the *echinos* and sealed for trial. The earlier hearings over the inheritance were under the jurisdiction of the Archon and were not preceded by an official arbitration; see 48.23n.

[51]Challenges are used elsewhere to acquire an opponent's identification of a document (see the Introduction to Dem. 45 at n. 24). It is clear from 48.50 that part of the agreement between Olympiodorus and the speaker entailed that the document could not be unsealed unless both men consented.

hear it! And not only then did I issue him the challenge before witnesses standing nearby: now, a second time I issue him a challenge before you, the judges, and I ask that he consent as I myself consent that the agreement be opened here in the courtroom, and that you listen to it, and that it be sealed up once again in your presence.[52] [**51**] Moreover, this Androcleides is present here, for I asked him to come along with the agreement. I consent, judges, that it be opened during Olympiodorus' speech, either his first or second one—for it makes no difference to me. But I do want you to hear both the agreement and the oaths that Olympiodorus here and I swore to one another. And if he does consent, let this be done and you yourselves listen if ever he agrees. But if he refuses to do this, won't it be immediately clear, judges, that he is the most impudent man on earth and that you could therefore in all justice reject any word spoken by him as unsound?

[**52**] Now why do I care so much about this? Even the defendant himself is well aware that he is wronging not only me but also the gods by whom he swore and that he swears falsely. But he has lost his wits, judges, and his mind has gone astray. I am distressed and embarrassed, judges, by what I'm about to tell you, but I'm forced to speak, so that you who have the vote in your hands may hear the whole story and then decide whatever seems best in our case.[53] [**53**] For what I'm about to say, the defendant is to blame—after all, he refused to be reconciled to me over these matters among our kinsmen and continues to act without shame. Olympiodorus here, judges, has never wed an Athenian woman in

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[52]Mere persiflage: a document cannot be added into evidence after official arbitration; cf. Dem. 45.16n.

[53]The words resonate with a clause from the oath that the judges swore before they entered upon their year of service: "concerning things about which there are no laws, I shall decide to the best of my judgment"; the clause appears in Speeches 20.118, 23.96, and 39.40. (For discussion of the oath and considerations of equity in the decisions of judges, see Scafuro 1997: 50–66.) The speaker's use of it here suggests that he wants the judges to base their decision on matters of equity rather than strict law; the law, on the other hand, on which the case is probably based (the law on "agreements"), had been mentioned quickly in 48.11.

accordance with your laws, and he has no children now and never has had any; instead, he keeps in his house a courtesan whose freedom he bought, and she is the one who is harming all of us and leading him further along the road to madness.[54] [**54**] For when a man has made an agreement and has contracted willingly with a willing partner and has sworn an oath—isn't it madness for him to think he's under no obligation to carry out any of it—especially when I'm deeply concerned not only for myself but also for his own sister born of the same father and same mother who is my wife, and for his niece who is my daughter? For these women are being wronged no less than I and in fact even more. [**55**] For aren't they being wronged and suffering terribly, when they see this courtesan of his weighed down with golden jewelry and fine clothing beyond the bounds of decency, and setting forth on brilliant outings, and preening herself thanks to our family resources while these women are too poor for any of this?[55] Aren't they suffering even more wrong than I? And isn't the defendant manifestly mad and out of his mind when he decides on such a life for himself? And to prevent him from saying, judges, that I'm telling you this to slander him because of this trial, the secretary will read you the testimony of his relatives and mine.

[TESTIMONY]

[**56**] Olympiodorus here is this sort of man—not only dishonest but also, in the opinion of all his relatives and acquaintances, utterly insane[56] because of the choices he has made in the way

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[54]There is nothing unlawful in Olympiodorus' purchasing of a non-Athenian woman and keeping her at home; if, however, he treated her as his wife, his conduct would be unlawful; see Dem. 59.16.

[55]Cf. Dem. 36.45 for bourgeois disdain for excess; the tone is perhaps slightly comical here.

[56]The speaker uses the term *melancholān*, lit., "to suffer from black-bile." While fifth-century medical theorists seem to have identified a set of bodily and mental symptoms ascribed to the darkening of the bile (e.g., Hippocrates *Airs, Waters, Places* 10), in popular usage, "black-biled" meant "utterly mad" (Aristoph. *Assemblywomen* 251, *Wealth* 366).

he lives; as Solon the Lawgiver says, no madman is ever so out of his mind as the man under the influence of a woman who is a prostitute. Solon even made a law[57] that all those transactions are to be invalid that a man enters into under the influence of a woman, and especially under the influence of a woman such as this. [57] Justly, then, did the Lawgiver oversee these matters, and so I beseech you, and not only I, but also my wife, the sister of Olympiodorus here, and my daughter, the niece of Olympiodorus here, we beseech and entreat you, judges, all of us (for imagine that these women are present here),[58] [58] first and foremost, to persuade Olympiodorus here not to wrong us, but if he refuses, then to vote, mindful of all our arguments, whatever seems to you most fair and just. And if you do this you will vote what is just and advantageous to all of us, and especially to the advantage of Olympiodorus himself.

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[57]This is an embellished paraphrase of the testamentary law cited at Dem. 46.14 and has nothing to do with this case (see the Introduction to Dem. 46, n. 7 and 46.14n). The clause alluded to here regarding the pernicious influence of women over men making wills is often, as here, speciously invoked (cf. Apollodorus' use of it at Dem. 46.16).

[58]A sense of decency would prevent their appearance at the trial.

49. AGAINST TIMOTHEUS

INTRODUCTION

Here Apollodorus sues Timotheus son of Conon of the deme Anaphlystus to recover 4,438 drachmas and 2 obols, the total of four loans (and one "supplement") made to Timotheus by Apollodorus' father, the banker Pasion, during the years 374–372. The trial did not take place until the late 360s.[1] In the interim, Pasion had died (370/69); his estate had been divided (ca. 367), but his former bank manager Phormion had retained the lease of the bank and shield factory until his younger son Pasicles came of age (ca. 364–362);[2] at that point, Apollodorus took over the shield factory, and Pasicles, the bank.[3] The remedy used to recover the debts in the trial represented by this speech is uncertain; it may have been an action for damages (*dikē blabēs*), although some scholars have tried to coax into existence an action for debt (*dikē*

[1]The date of the speech is anchored only by circumstantial data and is controversial. I retain the "traditional date" in winter 363/2 against more recent attempts to date it earlier (see below and nn. 20–21). That Apollodorus should wait a dozen years to collect the debt does not sound fantastic: Apollodorus goes after debtors or pursues other litigants as his schedule allows, as neediness requires, and as his opponents are present in Athens. He waits a dozen years once again when he sues Phormion in 350 to recover money from the leasing of the bank.

[2]For the data that produce Pasicles' date of birth, see the Introduction to Speech 45 n. 15.

[3]Dem. 36.8–11.

chreōs).[4] Apparently, no statute of limitations applied to the collection of these debts.[5] Scholars generally agree that the speech was not written by Demosthenes. It shares qualities (or their absence) that are found in other speeches delivered by Apollodorus.[6] Plutarch provides the information that Apollodorus won the case.[7]

A suit to recover money of this amount (less than a talent, whereas 20 talents seem to be at stake in Dem. 45) would be insignificant—except that the defendant is spectacular: Timotheus was a leading General in Athens during the period between the founding of the Second Athenian Confederacy in 377 and the revolt of Athens' allies in the Social War twenty years later; he was Isocrates' favorite student, his exemplar of the "honest and decent gentleman" (*kalos kagathos*).[8] Timotheus' father Conon was the victorious General at the Battle of Cnidus in 394, which had put an end to Sparta's hegemony in the Aegean. He was also an immensely rich man who left his son 17 talents at his death ca. 389.[9] Timotheus' military career and his bank account both had their ups and downs; and the red ink in the latter is related to the first downward turn of the former. This speech provides one of the best depictions of the link between one's military and economic position.

A conspicuous feature of Athenian public finance in the fourth century was its incapacity to fund the military enterprises that the Council and Assembly had voted to undertake. The military fund (*stratiōtika*), with revenues flowing in from tax-paying companies (symmories) and elsewhere, was insufficient; trierarchs who con-

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[4]See Harrison 1971: 79 n. 3; Todd 1993: 266–267.

[5]Different statutes of limitations seem to have regulated different financial arrangements: five years for "agreements" (Dem. 36.26–27); five years after the end of a guardianship (Dem. 38.17); one year for a guarantee (Dem. 33.27); a kinsman could contest the right of an intestate successor throughout his lifetime and for five years after his death (Dem. 43.16 and Is. 3.58).

[6]See the Introduction to this volume, n. 6.

[7]Plut. *Demosthenes* 15.

[8]Isoc. 15.101–139.

[9]Lys. 19.39–40.

tributed ships and maintenance for their crews were often delinquent, as Speeches 47 and 51 so well demonstrate.[10] Commanders were forced to look elsewhere for additional funding. They found one source in the exaction of contributions (*syntaxeis*) from Athenian allies,[11] another in plunder,[12] and still another by digging into their own pockets or raising private loans; occasionally, a commander minted his own coinage.[13] Certainly Timotheus' personal contributions in the 370s produced a sizeable dent in his fortune.[14] Apollodorus mentions that for the expedition to Corcyra in 374/3, Timotheus had "borrowed" seven minas (= 700 drachmas) from each of the sixty trierarchs who sailed out with him, mortgaged a piece of his property to each to secure the "loan," and then compelled them individually to distribute the sum to their crews (49.11). Timotheus' total debt from this interesting transaction was the enormous sum of seven talents.

Timotheus also borrowed the smaller sum of 1,351 drachmas plus 2 obols from Apollodorus' father for the same expedition (the "first loan"). It was not sufficient: unable to find enough men and money for the ships, Timotheus failed to reach his destination.

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[10]For symmories and trierarchies, see the Introduction to Dem. 42 at nn. 1–5 and Dem. 39.8n, 47.20n.

[11]See 49.49, and Isoc. 15.123–124 for Timotheus' exactions from allies. In 378/7, the Athenians established the Second Athenian League (*IG* II^2 43 = Rhodes and Osborne 2003: no. 22) consisting of autonomous members along with themselves as *hēgemones*. There was to be no "tribute" (*phoros*), but by 373 "common contributions" (*syntaxeis*) were being collected. See Rhodes and Osborne 2003: 101; Rhodes 2006: 233 for refs.

[12]For references, see Gabrielsen 1994: 251 nn. 26 and 27. He aptly quotes (p. 117) Demosthenes (8.26) from a speech of 341 to the Athenians: "For where do you suppose that he [a General] looks for maintenance of his troops, if he gets nothing from you and has no private fortune to furnish their pay? To the sky? No, indeed; it is from what he can collect or beg or borrow that he keeps things going."

[13]Timotheus issued bronze coins, some of which have been found at Olynthus (references in Rhodes 2006: 237).

[14]It appears that Timotheus' personal finances had already suffered since his father's death; to what extent this was due to his own public largess cannot be said. See Davies 1971: 508–509.

Suspended from his generalship for the gaffe, he was then tried for treason and acquitted in November 373/2 but not reinstated, at least not as a General in command of Athenian forces.[15] Instead, he left Athens in summer 373/2 to join the Persian King's service, whom the Athenians in the 370s were assisting against the rulers of Egypt.[16] The precise year of Timotheus' return is not known. He next shows up as an Athenian General in 366 and thereafter,[17] and it may be that by this date he had filled his coffers nicely once again. In any case, by the time of this suit, Apollodorus can claim that Timotheus was in possession of a large estate—even if he swore he did not have sufficient maintenance for his old age (49.67).[18]

Apollodorus' Arguments

Apollodorus begins his speech with general discussion of the loans and their circumstances. He then gives details about four separate loans, in more or less straightforward, chronological order. Timotheus had borrowed the first loan (the 1,351 drachmas plus 2 obols, as mentioned above) when he was about to leave on the expedition to Corcyra (49.6–9). As prelude to the second loan, he folds into a general depiction of Timotheus' legal and financial crises the tale of his seven talent debt to the sixty trierarchs for that same expedition (49.9–13). There is no doubt that the irrelevant material is included to demonstrate the dire straits of the General and the kind-heartedness of Pasion who, willy-nilly, makes a loan to the impecunious General. Timotheus borrowed the second loan (1,000 dr.) when he was on the point of

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[15] See below, 49.9nn and Diodorus Siculus 15.47.3 and Xen. *Hellenica* 6.2.13 for accounts of Timotheus' recall to Athens. The charge is cited as treason in [Plut.] *Moralia* 836D.

[16] See 49.25–28, 59–60, and Diodorus Siculus 15.41–43.

[17] *IG* II^2 108 for a generalship in 366/5 (misdated to 365/4 by Develin 1989: 256–257) and *IG* II^2 110 for one in 363/2. For a generalship in 365/4, see references in Develin 1989: 261. Generalships after 363/2 are not well attested.

[18] See 49.67n.

returning home for trial after his deposal from office (49.14–21). He borrowed for the third time immediately before that trial began, when Alcetas the ruler of the Molossi and Jason the tyrant of Pherae had arrived at his house to give him assistance (49.22–24): he borrowed bedding, cloaks, two silver drinking bowls, and a mina of silver.

After being acquitted in the trial, Timotheus made arrangements to borrow for the fourth time when he was about to sail away to join the King's service (49.25–30). Finally, as an addendum to the third loan, Apollodorus reports that a man named Timosthenes arrived from abroad, looking for the silver drinking bowls he had stored at the bank before leaving Athens. Since these turned out to be the very bowls that Timotheus had borrowed but not returned, Pasion charged their cost to Timotheus (237 drachmas) and persuaded Timosthenes to accept the sum (49.31–32). Having now recounted the four loans plus the addendum to the third, Apollodorus furnishes testimonies of witnesses (49.33–34) and adds a "proof by probability" (49.35–41) and a challenge to Timotheus to tender him an oath during the arbitration (49.42 and 65). He has the unsworn oath read to the court, and, to round off this section of the speech, he has his brother give testimony, presumably that he was aware of these debts (49.42).

To this more or less straightforward presentation, Apollodorus adds his strongest argument based on the bank's records (*ta grammata*). Challenged by his opponent before the arbitrator to produce the records, he accepted and allowed Timotheus' "go-between," Phrasierides,[19] to examine them and write down the sums owed (49.43). Now Apollodorus tediously goes through each of the four loans once again, adding confusing arguments of probability regarding the first and second (49.44–47 and 48–54), an argument about his own proffered and then rescinded challenge regarding the testimony of the man who borrowed the items for Timotheus (the third loan, 49.55–58), but using the bank records to good effect for establishing the dates and names of agent and debtor for the fourth loan (49.59–61). Next, he addresses an objec-

[19] See 49.43n; "go-between" is Davies' apt designation at *APF* 14976.

tion to the addendum to the third loan: why hadn't Pasion simply asked Timotheus to return the silver bowls (49.62)?

To give the final touch to his rehash of the first half of the speech, Apollodorus demonstrates why it was far more essential for him to refuse Timotheus' counterchallenge, that Apollodorus should offer him an oath to swear, than it had been for Timotheus to refuse his own similar challenge: Timotheus falsely swears even the most solemn oaths in the Assembly and deceives the people with false promises (49.65–67). He closes with a rebuke to men of Timotheus' ilk for causing bankruptcies in Athens and with a petition for the judges' assistance in recovering the debts which his father left behind to him (49.68–69).

The Date of the Trial

Aside from the links between military position and economic instability mentioned earlier, the speech is of interest for its details on banking practice and its more scattered details regarding procedures before the official arbitrator (e.g., the use of challenges and oaths). It raises some interesting questions of inheritance, especially regarding Apollodorus' capacity to bring this case at all: the bank, apparently, belonged to his younger brother at the time of trial. Moreover, there has been some recent controversy over the date of the lawsuit,[20] which has important implications for legal procedure.

Any argument for date is based on circumstantial data. In my view, these point to winter 363/*2* (the date that has been traditionally assigned to the speech) and are as follows:[21]

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[20]Harris 2006 [1988]: 355–364; Trevett 1991 and 1992: 35–36. Harris' starting point for "deconstructing" the traditional date for the speech is to point out that no extant law prohibits minors from giving testimony in an Athenian court. Therefore, it is possible that Pasicles gave testimony when he was a minor, and there is no firm ground to make Pasicles' attainment of majority (between ca. 364 and 362) a terminus post quem for the trial. For this and other reasons (see 49.8n), Harris concludes that the trial took place at some point between 370/69 and 367/6.

[21]For fuller discussion, see Schaefer 1858 and Trevett 1991 and 1992 (following Schaefer). I differ from Schaefer in that I see no need to posit that

1. Pasicles gives testimony (49.42) for his brother and so is probably 18 years old (Pasicles turns 18 between 364 and 362);[22] while there is no evidence that a law prohibited minors from giving evidence, there is no evidence that any minor ever did. If it were lawful, it would be highly unusual—and there is no sign here that Pasicles is doing something out of the ordinary.

2. Apollodorus leaves on a trierarchy in late summer 362/1 (Dem. 50.4) that will keep him away from Athens for two years. On his return in 360, his mother dies (Dem. 50.60) and he quarrels with Phormion (Dem. 36.14); the latter, however, gives evidence on his behalf in this speech (Dem. 49.18, 33).

3. Timotheus, a member of the board of Generals in 363/2, is most likely in Athens during the sixth prytany (ca. January) of that year, when he "makes the case" (*apophainei*) to the Council that Menelaus the Pelagonian was taking part in the war on their side and providing money for the war against the Chalcidians and against Amphipolis (*IG* II² 110 = Rhodes and Osborne 2003: no. 38).[23] Presumably, he has made his

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Timotheus was "recalled" by an adverse vote of the Athenians in 363/2. I think Timotheus came to Athens to shore up his position (see above, Datum 3) and to divert criticism from his command that had probably come under attack as the trials of his colleagues demonstrate (Datum 4). There is no break in his command to the north; Harris' (2006 [1988]) objection to the "end" of Timotheus' command is therefore meaningless. He ignores the trials of Callisthenes and Ergophilus and apparently sees no reason to put Timotheus in Athens in 363/2. He assumes that the twenty cities mentioned by Din. 1.14 and the twenty-four mentioned by Isoc. 15.113 were all captured in the period between 364 and 360, whereas Isocrates explicitly says he is presenting a summary treatment of lifetime achievement.

[22]See above, n. 2.

[23]The verb *apophanein* ("to make the case" or "demonstrate") regularly appears in causal clauses ("since X demonstrates that Y is a good person") in proxeny and other honorary decrees throughout the fourth century (from 375/4). That the "demonstrator" is present to give the oral report directly at the meeting is often revealed elsewhere in the text of such decrees. While Timotheus' presence is not certain, it is very likely.

report to the Council *after* the campaigning season of 363 is over.[24]

4. There is evidence that two members of the board of Generals in 363/2, Callisthenes and Ergophilus, were put on trial during that year because the northern campaign was not viewed as successful at this time.[25]

According to the first circumstantial datum, the earliest the case could come to court is some point ca. 364–362, when Pasicles came of age. According to circumstantial Data 2 and 3, both Apollodorus and Timotheus are likely to be in Athens in winter 363/2, and it seems unlikely that Phormion would appear as a witness in Apollodorus' behalf after that date. It is unclear whether Timotheus would still be in Athens when other Generals who served in the northern wars were called home to face trial in 362. There is no evidence that Timotheus himself was censured by a vote of (no) confidence at this time.[26] On the other hand, his recommendation for Menelaus (Datum 3) is promoted by the Council. If at this moment he had been summoned to court for old debts to Pasion, he may have felt this was the right moment to face the music—or perhaps he had little choice. He was, by this argument, in Athens and so was Apollodorus in 363/2. It is possible that Timotheus may have been in Athens at the same time as Apollodorus earlier in the period 364–362, but there does not appear to be any evidence for his presence.[27]

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[24]Rhodes and Osborne 2003: 194.

[25]For sources, see Hansen (1975, cat. nos. 85 [Callisthenes] and 86 [Ergophilus]), who suggests that the men had concluded an armistice with Perdiccas of Macedon when there was no need to come to terms. Sealey 1956: 199 argues more persuasively that the men were in charge of operations against Amphipolis, and the failure to take Amphipolis was blamed on them.

[26]See Sealey (1956: 199), who argues that Timotheus' two colleagues served as scapegoats for him.

[27]Timotheus may have proposed a decree in Athens during his generalship in Dec. 366/5 (presumably after the ten-month successful siege of Samos, from March to Nov. 367/6: Isoc. 15.111; Dem. 15.9–10); while the de-

Apollodorus' Capacity to Bring the Suit

Pasicles was of age, but even more than that, Phormion's lease to the bank and shield factory had terminated, and a new agreement was about to be made. Between Pasion's death and 367 the brothers had shared equal revenues from Pasion's estate (Dem. 36.8). With the division of the estate in 367, the revenues depended on the particular assets owned by each individually—except for the rents from the bank and shield factory, which were still shared equally (Dem. 36.37). Now, in 362, there was to be a further change: Pasicles henceforth would receive the revenues from the bank, and Apollodorus, those from the shield factory.[28] But the agreement between the two brothers must have been more detailed than that: together, they leased the bank to other men for the next ten years, from 362 to 352 (Dem. 36.14 and 37). If Apollodorus received no percentage of the rent from the bank while serving as co-lessor or "agent" (Dem. 36.37), what did he receive for the service? Moreover, why did he take the shield factory when the bank brought in a greater rent (Dem. 36.37)?

We should at this point fix our attention on the debts owed Pasion before his death. Surely these belonged to both brothers, both before and after the bank became Pasicles' as part of the joint inheritance from Pasion; but how to recover them? Wouldn't Apollodorus, by virtue of his fourteen-year age difference with his brother and his greater experience in the courts be better equipped to recover the money than the eighteen year old? It is a reasonable guess that the two brothers made a deal.

The dating of the speech to 362, at the time when Pasicles reached majority, thus dovetails with Apollodorus' capacity to recover the outstanding loans made by Pasion and owed to the bank.[29] Both brothers have an interest in recovering the loans,

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cree (*IG* II² 108) is lacunose, the extant letters in lines 10 and 13 guarantee the name Timotheus (although his action of "proposing" a motion is less certain).

[28]See the Introduction to Dem. 45, nn. 15 and 20.

[29]The problem has vexed commentators who have viewed the debts as part of the inheritance from Pasion. My view is essentially the same as Tre-

and Apollodorus, via an agreement with his brother, is suing for the two of them. We do not know the details, but it is possible that Apollodorus stipulated for more than an equal share in repayment for his efforts: for litigating and arranging the new bank lease and for taking the shield factory instead of the bank.[30]

AGAINST TIMOTHEUS, CONCERNING A DEBT

[1] None of you should find it incredible, oh judges, that Timotheus was in debt to my father and now is being sued by me.[31] Once I've reminded you of the circumstances under which the obligation was incurred and the mishaps that befell him during that period and the straits in which he found himself, then you'll understand that my father was as kind as could be to Timotheus, while the latter not only is ungrateful but also is the most unjust of all men. [2] Indeed, although he got from my father all that he had asked for and received the money from the bank at a time when he was without resources and in the greatest peril for his

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vett's (1991: 26–27), except for my additional suggestion of the agreement between the brothers that permitted Apollodorus to get a little bit more for his efforts. To an objection, that the loans to Timotheus are drawn "from the bank" (49.4, 7, 17, 29) and so belong only to Pasicles, the answer can be made: though drawn from the bank, they are drawn from Pasion's "account" since he is overseeing them personally at a time when Phormion appears to be the bank manager (49.17).

[30] A remark of Phormion's advocate in 350/49, when the brothers had argued and parted ways, might refer to the conjectured private agreement for sharing proceeds from litigation beginning in 362 and not (or not only) to the sharing of reimbursed debts earlier on, before 367: "From the debts he has collected twenty talents altogether, in accordance with the records his father left, and he retains more than half of that; for in many cases he defrauds his brother of his share" (Dem. 36.36, trans. MacDowell 2004). Perhaps Phormion's advocate has exaggerated on his client's behalf: Apollodorus may have arranged, with Pasicles' agreement, a larger share for himself.

[31] For Apollodorus' father Pasion and his career as a banker in Athens, see the Introduction to Dem. 45.

life,[32] not only did he not show any thanks, but he's even trying to rob me of the money he received. And yet, if the defendant had suffered loss, the loan, too, was lost for my father,[33] for he gave it neither on security nor in the presence of witnesses;[34] but if the defendant survived, he could pay us back at his own discretion when his resources should be secure.

[3] Be that as it may, judges, my father still considered his supply of cash of less importance than assisting Timotheus to obtain what he had requested in his moment of need. In fact, judges, my father thought that if Timotheus survived those perils and arrived home from the King's service, once he was more secure in his resources than he was at that time, not only would he recover his own money, he would also be able to obtain any other service he might ask of Timotheus.[35] [4] But events have defied his expectation; now that he is dead,[36] Timotheus thinks he need pay

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[32]Apollodorus alludes vaguely to Timotheus' "peril" throughout the speech. The "peril" was threefold. The first was the expedition for Corcyra on which he was about to set out in 374/3. The second was the trial that followed upon his suspension as General in 373/2 (see 49.9nn). The third was the aftermath: acquitted, he then left Athens to join the Persian King's service.

[33]Apollodorus speaks in a general way in his opening statements referring to Timotheus' four loans as one (amounting to 4,338 drachmas and 2 obols in toto).

[34]Apollodorus represents as exceptional what were more or less common practices in Athens. Loans that were not secured were by no means a rarity (see Cohen 1992: 144). There is also some exaggeration on this point: Pasion received security for one of the loans, see 49.35. Moreover, it was common banking practice for transactions to take place without witnesses (cf. Isoc. 17.2); their absence was offset somewhat by the presence of banking cashiers who were often slaves (and so might be tortured for evidence) and the banker's use of "record books" (*grammata*: 49.43, 44, 59) and memoranda (*hypomnemata*: see 49.5,8). For discussion of the absence of witnesses, see Cohen 1992: 117–118, 205–206; Mirhady in Mirhady and Too 2000: 82 n. 1.

[35]Pasion hoped not only for Timotheus' safety in battle but also that he would enrich himself handsomely with plunder or gifts from the King (cf. 49.27, 36, and 37). See further 49.67.

[36]Pasion died in 370/69 (Dem. 46.13).

back the sum he gratefully received from the bank—after first having begged it of my father—only if he is proven to be a debtor in a belligerent lawsuit; but if he can persuade you that he is *not* a debtor by deceiving you with his arguments, he will rob us of the money. It therefore seems I must give you a full and detailed account from the beginning of the sums that are owed, including the purpose for which he used each of them and the dates on which any given loan was contracted. [5] And don't any of you be surprised at the accuracy of my knowledge: bankers are accustomed to write down memoranda for themselves of the sums they've lent and their purpose and the deposits a borrower makes so that both debits and credits may be known to them in accordance with the rules of accounting.[37]

[6] During the archonship of Socratides in the month Munychion,[38] when this Timotheus here was about to sail out on the later expedition[39] and was already in Piraeus on the verge of putting to sea, finding himself in need of additional money, he approached my father in the port and asked for a loan of 1,351 drachmas plus 2 obols.[40] He said he needed just so much addi-

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[37]It is remarkable, as Gernet 1959: 9 n. 1 points out, that the memoranda should contain the "purpose" for which the money was obtained (cf. 49.30); the report is confirmed by Hyp. *Dem*. fr. 2.

[38]The archonship of Socratides fell in 374/3. Munychion was the tenth month of the Attic year (which began in July), roughly corresponding to our April.

[39]Apollodorus never mentions Timotheus' successful "earlier expedition" in 375/4. Campaigning in northwest Greece, he won the support of cities in Cephallenia, Acarnania, and Corcyra for the Athenian League and defeated a Spartan fleet off Alyzia opposite Leucas (see Rhodes 2006: 215 for references). For the "later" or second expedition in 374/3, the Athenians ordered sixty ships be manned for Corcyra with Timotheus in command; he failed to reach his destination because he could not find enough money and men for the ships and was subsequently tried for this "failure," probably on a charge of treason (see 49.9nn). Perhaps the designation, "the later expedition" had become a notorious, sneering taunt against Timotheus during the trial in 373.

[40]This is the first loan from Pasion; its purpose is to cover the expenses of the expedition; see 49.44–47.

tional cash, and he instructed him to give the sum to Antimachus, his treasurer, who at that time was managing everything for him. [7] So the man who borrowed the money from my father and instructed him to give it to Antimachus his treasurer was Timotheus; but the man who received the money at the bank from Phormion was Autonomus, the very same man who continued all that time to serve as secretary to Antimachus.[41] [8] Accordingly, when this money was counted out, Phormion[42] wrote down as the name of the debtor the man who asked to borrow it, Timotheus, and he added, as a memorandum, the names of both Antimachus and Autonomus, that is, the man to whom Timotheus instructed him to give the sum, and the man whom Antimachus sent along with him to the bank to get it, the sum being 1,351 drachmas and 2 obols. The first loan, then, that Timotheus received upon sailing out on the later occasion while serving as General[43] was for so much money.

[9] After you had deposed Timotheus from his generalship[44]

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[41] Payment to third parties was a common feature of banking; the man asking for the loan introduces or otherwise identifies the party who is to collect the sum; cf. Dem. 53.4 and 49.60n.

[42] For Phormion's career, see the Introduction to Dem. 45 at nn. 19–21.

[43] The expression "[on] the later occasion" (*to hysteron*) is unclear. Some translate "as general the second time"; this is probably wrong—Timotheus was general not only in 375/4 and 374/3 (the date referred to here) but also earlier, in 376 (Diodorus Siculus 15.29.7–8). Others translate "as general the last time," which, if correct, must be interpreted from the vantage point of the date of the current trial. The Greek phrase, however, does not mean "the last time." The expression is translated here *ad sensum* as a cognate accusative, lit. "sailing out the later sailing out," and so refers to the later expedition; cf. 49.6.

[44] Timotheus suffered an adverse vote (*apocheirotonia*) during a "vote of confidence" in the Assembly. Aristotle reports on the procedure twice in the *Ath. Pol.* (43.4 and 61.2). In the latter passage, he says: "And there is a vote of confidence regarding the generals each prytany [i.e., every 35 or 36 days], to determine whether they seem to be carrying out their duties rightly; and if they [the *dēmos*] suspend anyone, they prosecute him in the lawcourt. And if he is convicted, they [the judges] assess whatever he should suffer or pay. But if he is acquitted, he returns to service." The law appears to have changed between the time of Timotheus' trial and the writing of *Ath. Pol.*

for failing to sail around the Peloponnese[45] and had handed him over for trial before the Assembly to face a most serious charge,[46] Callistratus and Iphicrates opposed him,[47] powerful men both in action and in speech.[48] These men and their co-pleaders so impressed you with their accusations against him [10] that in the trial before the Assembly, you condemned Antimachus to death, the man who had been Timotheus' treasurer and most devoted associate, and you confiscated his property; as for Timotheus himself, although all his close friends and relatives interceded, and also Alcetas and Jason who were your allies,[49] you were just barely persuaded to acquit him, and you dismissed him from car-

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since Timotheus' trial was held before the Assembly and not in a lawcourt. See Hansen 1975: 53 and Rhodes 1981: 525. See 49.10n.

[45]For the cause of Timotheus' failure to sail around the Peloponnese on the "later" expedition to Corcyra, see 49.6n.

[46]The trial before the Assembly is depicted by modern scholars as one by denunciation (*eisangelia*), and the charge may have been treason ([Plut.] *Moralia* 836D), a charge made frequently against the failures of Generals; see Hansen 1975: 91, cat. no. 80. For the date, see 49.22.

[47]Callistratus (ca. 415–355) was a leading statesman and orator in the early fourth century, much admired by Demosthenes (Plut. *Demosthenes* 5.1–3; [Plut.] *Moralia* 844B; Dem. 18.219 and 19.297; Callistratus was himself denounced (Hyper. *Eux.* 1) and convicted in absentia probably in 361 (see Hansen 1975: 94–95, cat. no. 87 and Whitehead 2000: 172–173). Iphicrates was a renowned Athenian general whose first exploit may have been the sea battle at Cnidus in 394. Early on, he may have had a close and friendly association with Timotheus' famous father Conon (Davies 1971: 249), which obviously did not extend to his son. The two (Iphicrates and Timotheus), however, were reconciled (as the marriage alliance in this speech shows at 49.66) and often fought in Athens' wars in the Aegean and the north, "though never together" (Rhodes 2006: 271). Iphicrates died ca. 351.

[48]The monstrous sentence that begins here at 49.9 in the Greek text does not conclude until the end of 49.14 and is one of the most poorly constructed and circular sentences in the corpus.

[49]Alcetas was ruler of the Molossi in Epirus, and Jason was tyrant of Pherae in southeastern Thessaly, allies of one another (Xen. *Hellenica* 6.1.7). Alcetas joined the Athenian League in 375, and Jason may have done so at the same time; the latter was assassinated in 370. See Rhodes and Osborne 2003: 105 and 222.

rying on as General.[50] [11] Such was his disrepute—and he was in great need of money. All his property was encumbered, mortgage pillars had been set up on it,[51] and other people were in charge. The farm in the plain had become security for the son of Eumelides,[52] and the rest of his property was mortgaged to the sixty trierarchs who sailed out with him—seven minas pledged to each of them—for Timotheus, when he was serving as General, had compelled them to distribute this sum to the sailors as maintenance,[53] [12] but after his suspension, when he reported in his accounts that he had himself drawn the seven minas for the ships out of the military fund,[54] he grew fearful that the trierarchs would testify against him and that he would be shown up as a liar. That's when he personally borrowed the seven minas from each and mortgaged his property to them; and now he is defraud-

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[50]According to Arist. *Ath. Pol.* 61.2 (see 49.9n), Generals who were suspended, brought to trial, and *acquitted* were returned to office. If the same rule (but see 49.9n) applied earlier in the fourth century (the *Thesmothetai* of 344/3 were suspended by an *apokheirotonia*, acquitted, and returned to office: Dem. 58.27–28), then Timotheus' deposal from office is unusual. It may be, however, that a decree of the Assembly was required to reinstate a deposed General (thus MacDowell 1978: 169).

[51]For the use of "mortgage pillars" or *horoi* to mark off property as security for money owed to others, see the Introduction to Dem. 41, n. 5. Apollodorus exaggerates here the extent of Timotheus' encumbrance: he somehow retained possession of a house in Piraeus (49.26, 36, and 61); see further 49.66n.

[52]Probably the son of Eumelides is an orphan whose estate or some part of it Timotheus has leased and used his farm as security; the transaction is perfectly regular: see *Ath. Pol.* 56.7.

[53]The seven minas to each trierarch come to 42,000 drachmas or 7 talents—an enormous sum. Gabrielsen 1994: 120–121 calculates that each trierarch for a two-month campaign might need between 2,000 and 4,000 drachmas for maintaining the ship and crew; the trierarchs here are able to lend the 7 minas, which according to Gabrielsen, comes from their cash reserve onboard ship.

[54]Here and in 49.16, Timotheus is depicted as rendering his accounts after being suspended from office; see Tuplin 1984 and below, 49.25n.

ing these men of this money and has pulled down the mortgage pillars from the property![55]

[13] Being at a loss in every quarter and subjected to a serious trial on a capital charge because such disastrous troubles had befallen the city—the army had been disbanded in Calaureia without pay[56] and the allies in the Peloponnese were under siege by the Lacedaemonians, and meanwhile Iphicrates and Callistratus were accusing him of being the cause of the present disaster and messengers, moreover, were arriving from the army and reporting before the Assembly the army's neediness and distress, and at the same time each man on his own was hearing how matters stood from the letters of close friends and relatives (you who heard these reports in the Assembly at that time recall how each of you felt about him, for you know the arguments that were made)—[14] well, then, being on the verge of sailing home for the trial,[57] Timotheus borrows a thousand drachmas in Calaureia from Antiphanes of Lamptrae (the man who sailed on board as treasurer for the shipowner Philip). He wanted to distribute the money to the Boeotian trierarchs so that they might remain until the trial should be over and so that you might not be all the angrier with him if the Boeotian triremes should disband before that time and their crews slip away.[58] [15] For while our citizens

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[55]Cf. 49.16–17: On Apollodorus' telling, Timotheus borrows money to defray expenses for the Boeotian fleet, claims in his accounts that the money was drawn from the military fund, and fears that his enemies will find out the money was a loan and that the creditor was being defrauded and might testify against him. In that case (49.16–17), however, Timotheus allegedly gets a loan from Pasion to repay his creditor. In the case here (49.11–12), if Apollodorus is to be trusted, it does not appear that Timotheus repaid the trierarchs: whereas "the pulling down of the mortgage pillars" should indicate that the property is now free of the lien upon it because the owner has paid his debt, Apollodorus represents it as indicating that Timotheus has pulled them down without paying his debts.

[56]Calaureia, an island off the eastern coast of the Peloponnesus, is the modern Poros.

[57]This is the same trial that was announced in 49.9.

[58]Here ends the sentence that had its start at the beginning of 49.9.

endured their wretched conditions and stood their ground, the Boeotians refused to do so unless someone should provide them daily maintenance.

It was then that Timotheus, under great constraint, borrowed the thousand drachmas from Antiphanes who was sailing as treasurer to the shipowner Philip, and he gave the money to the commander of the Boeotian fleet. [**16**] But after he arrived here, both Philip and Antiphanes demanded the thousand drachmas that he had borrowed in Calaureia, and they were vexed at not getting their money back with any speed. Timotheus then began to fear that his enemies would find out that the thousand drachmas that he had reported in his accounts as having been drawn from the military fund for the Boeotian fleet were in fact a loan from Philip and that the latter was being defrauded of his money;[59] [**17**] and at the same time, he was afraid that Philip might testify against him during the trial. He therefore approached my father and begged him to get him clear of Philip and to advance him the sum of a thousand drachmas to repay the man. And my father, seeing how serious Timotheus' trial was, and how dire his situation was, took pity and brought him to the bank and asked Phormion who was sitting at his counter to pay a thousand drachmas to Philip and to register Timotheus as the debtor.[60] [**18**] And to prove the truth of these statements, I'll furnish Phormion as a witness, the man who paid the money—but only when I've told you about the other loan; this way, by hearing about the entire debt in the same deposition, you may know that I speak truly.[61]

I'll also call before you Antiphanes, the man who lent the money to Timotheus—the thousand drachmas—in Calaureia and who was present when Philip recovered the sum from my father here in Athens. [**19**] Yes, I'll *call* him, for he used a trick to

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[59] Cf. 49.11–12.

[60] This is the second loan; see 49.48–54.

[61] Phormion presumably gives his testimony in 49.33; although not yet a citizen, he was a free man at the time of trial (see the Introduction to Dem. 45) but possibly still a slave at the time of the loan. Banking employees (often slaves) would usually be the only witnesses to banking transactions; see 49.2n, 33n, and 42n.

prevent me from putting his deposition into the evidence when we met before the official arbitrator, saying over and over again that he would testify on the day of the arbitrator's decision. But after the arbitration hearing was underway, although Antiphanes was summoned from his house (for he was nowhere in sight), he was influenced by Timotheus and failed to appear for the deposition. And after I deposited a drachma as the law prescribes against Antiphanes for his failure to appear,[62] the arbitrator didn't give a condemnation[63] but went away and pronounced in his favor since night had fallen. [**20**] Now, however, I have entered a private suit against Antiphanes for damages,[64] because he neither gave testimony for me nor swore an oath of denial as the law prescribes.[65] Indeed, I urge him to come up to the speaker's platform and state under oath before you, first, whether he lent a thousand drachmas to Timotheus in Calaureia, and second, whether Philip received this sum here in Athens from my father. [**21**] In fact, while Timotheus himself more or less admitted before the arbitrator that my father paid the thousand drachmas to Philip, he nonethe-

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[62]The procedure that Apollodorus starts up against Antiphanes is not at all clear. Gernet (1959 n. 2) suggests that the expression "for failure to appear [as a witness]" is not a technical name for an action (i.e., there is no *dikē lipomartyriou*), but rather the deposit of the drachma gives formal notice of an intention to bring an action for damages (see 49.20n). For a different view, that there was a remedy for a witness who was summoned and then failed to appear before the arbitrator to confirm evidence, see Harrison 1971: 141–143.

[63]Apollodorus' opponent in this arbitration is not named but is Timotheus (see Gernet).

[64]This passage is the only evidence in the orators that an action for damages could be brought in this connection, although it is possible to interpret Dem. 29.15 in this way ("desiring neither to perjure himself nor to be cast immediately in a suit [for damages]"; alternative translation and interpretation in MacDowell 2004: 55). Plato *Laws* 937a prescribes that "a man who has been summoned for testimony, if he doesn't appear for the summoner, is to be liable to a suit for damages in accordance with the law." We of course cannot know if there is any real connection between Athenian laws and the "laws" prescribed in Plato's treatise. See Harrison 1971: 142–143.

[65]For the "oath of denial," see Dem. 45.58n.

less maintained that it was not to *himself* that my father lent it but to the Boeotian admiral, and he added that the latter gave copper as security for the sum.[66] And to prove that he was not telling the truth but that he himself borrowed the money and is trying to defraud us of it, I'll show you, after I've explained to you in detail about his other debts.

[**22**] For in the month Maemacterion, in the archonship of Asteius,[67] when Alcetas and Jason came to Timotheus to give assistance at his trial and arrived at his house in Piraeus in the district of the Hippodameia at nightfall,[68] Timotheus, being without means to entertain them, sent his attendant Aeschrion to my father and told him to ask for bedding and cloaks and two silver drinking bowls and the loan of a mina of silver. [**23**] When my father heard from Timotheus' attendant Aeschrion about the men who had arrived and the reason for the request, he furnished the sought-after items and lent him the mina of silver that he wanted to borrow.[69] Well then, after this, when Timotheus had been acquitted of the charges, he found himself in dire need of money to pay off both his private debts and taxes to the state. My father saw his plight and didn't dare make an immediate demand for payment—[**24**]—for he didn't think that the defendant would wrong him once his circumstances improved nor that he himself would have any means to exact money from him, impoverished as he was. Well then, after Alcetas and Jason went away, Timotheus' attendant Aeschrion brought back the bedding and the cloaks, but did not return the two drinking bowls that he had asked for at the same time as he had borrowed the bedding and the mina of silver when Alcetas and Jason came to his house.

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[66]Apollodorus' argument here is the following: since Timotheus claimed that the Boeotian admiral borrowed the thousand drachmas from Philip and since the same sum was later borrowed from Pasion (even if not by Timotheus) to repay Philip, therefore "Timotheus himself more or less admitted . . . that my father paid the thousand drachmas to Philip."

[67]Asteius' archonship fell in 373/2; Maemacterion is the fifth month of the Attic year, roughly our November.

[68]The Hippodameia is the marketplace in Piraeus named after the city planner Hippodamus.

[69]This is the third loan; see further 49.55–58.

[**25**] Well then, when Timotheus was about to leave the country for the Persian King and had completed his preparations for sailing off to serve as one of the King's Generals in the war against Egypt so as to avoid rendering accounts here and undergoing audit for his generalship,[70] he summoned my father to the Paralion,[71] commended him for his past acts of kindness, [**26**] and introduced him to Philondas. The latter was Megarian by birth but a foreign resident [i.e., a metic] in Athens; he was extremely devoted to Timotheus and in his service at the time.[72] Timotheus then asked my father: when Philondas (whom he had introduced to him) arrived from Macedonia with timber that was a gift to him from Amyntas,[73] would he supply him the transport money for it and allow Philondas to bring the timber to his house in Piraeus? For the timber, he said, belonged to him. [**27**] Along with this request, he made statements that are inconsistent with his present conduct; for he said, even should he fail to obtain what he asked for from my father, he would not be angry as another man might be who similarly failed, but if ever he should have the means, he would show his gratitude for past services performed by my father at his request. And when my father heard these words, he was

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[70]All retiring magistrates in Athens had to undergo an audit of their accounts within thirty days of leaving office or of handing in their accounts for inspection; see *Ath. Pol.* 54.2. Scholars usually accept Apollodorus' remark here and infer that the audit of deposed Generals would take place at the same time as the audit of retiring magistrates—at the end of their year of service—even though deposed Generals *may not have completed* that year of service. Surely Apollodorus is disingenuous here: he has already depicted Timotheus as handing in his accounts in 49.12 and 16; it now suits his purpose to claim otherwise.

[71]According to Harpocration, there was an Athenian hero named Paralus; the Paralion was a sanctuary of this hero in Piraeus.

[72]The term for "introduced" (*sunistanai*), which Apollodorus will use ten times more in the course of the speech, may be technical (see Gernet 1959: 20 n. 3), denoting the commissioning of a third party (here, Philondas) to carry out a banking transaction on behalf of another.

[73]Amyntas III became king of Macedon ca. 393. Though driven out at least once, he returned and was king until his death in 370/69; see Rhodes 2006: 297 for sources.

delighted and commended Timotheus for remembering his good treatment and promised to do all that he asked of him.

[**28**] After this, he put to sea and headed for the King's Generals, and Philondas began the voyage to Macedonia; he was the man to whom Timotheus had introduced my father so he would pay him the transport money when he arrived with the timber. The time was about the month Thargelion in the archonship of Asteius.[74] [**29**] Philondas returned the following year with the timber from Macedonia while Timotheus was out of the country in the King's service. He approached my father and asked him to supply the transport money for the timber so he might settle with the shipowner, just as Timotheus had asked my father to do when he was on the verge of sailing off and had introduced Philondas. My father, then, brought him to the bank and told Phormion to give him the transport money for the timber, 1,750 drachmas. [**30**] Phormion counted out the money and registered Timotheus' name as the debtor (for this was the person who had requested my father to supply the transport money for the timber and the timber belonged to him), but he also added in writing a memorandum, noting the use for which the money was received and the name of the recipient.[75] This transaction took place in the archonship of Alcisthenes,[76] the year after the defendant sailed for the King's service.

[**31**] About the same time as this, Timosthenes of the deme Aegilia also arrived, having been abroad on some private business. Timosthenes was a close friend and associate of Phormion, and so when he was about to sail away, he had given him some items for storage, including two bowls of Lycian workmanship. By chance these were the bowls that the slave boy, unaware that they belonged to someone else, had given to Aeschrion, the attendant whom Timotheus sent to my father to request the bedding and cloaks and bowls and to borrow the mina of silver at the time

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[74]In 373/2; see 49.22n.

[75]See 49.5n.

[76]Alcisthenes' archonship fell in the year 372/1. This is the fourth loan, further discussed in 49.59–61.

of the visit of Alcetas and Jason.[77] [32] And when, after his arrival home, Timosthenes requested the bowls from Phormion, my father persuaded him, since Timotheus was out of the country in the King's service, to take the value of the bowls, as much as they were worth by weight, 237 drachmas. And so he paid to Timosthenes the value of the bowls, but he registered Timotheus as the debtor for the payment he had made to Timosthenes for the bowls, over and above the rest of what he owed him.[78] [33] The secretary will read you the relevant depositions to prove that everything I say is true: first, those from the men who were sitting at the banking counters at that time and who disbursed the money from the bank to those whom the defendant bid, and after that, the deposition from the man who received the price of the bowls.[79]

[DEPOSITIONS]

You have now learned from the reading of the depositions that I'm not lying to you about the statements I made. And to prove that even Timotheus himself acknowledged the timber brought by Philondas was delivered to his own house in Piraeus, the secretary will read you the relevant deposition.

[DEPOSITION]

[34] Well then, the defendant himself has given evidence for me that the timber that Philondas brought belonged to him: he acknowledged before the arbitrator that it was delivered to his own house in Piraeus, and the men who heard him have given ev-

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[77]Note that in 49.24, Apollodorus reported that Timotheus' attendant had returned the bedding and the cloaks but not the two bowls or (presumably) the mina of silver.

[78]This is a supplement to the third loan; see 49.62–64.

[79]One deposition from the first group will be Phormion's, promised earlier at 49.18. Like Phormion, the other bank clerks here may have been slaves at the time when they "disbursed the money." If so, they will have been freed before giving testimony. The second deposition is Timosthenes'.

idence. Furthermore, I'll try to show you that I'm telling the truth with a logical proof. [**35**] So consider, judges: suppose that the timber did not belong to Timotheus and that he had not begged my father to supply the transport money when he introduced Philondas to him and was on the verge of putting to sea and joining the Generals in the King's service; do you think, on this hypothesis, that my father would ever have allowed Philondas to carry the timber away from the harbor, seeing that the timber was secured to him for the transport money?[80] Wouldn't he instead have stationed one of his slaves to stand guard and seize payment for the timber as it was being sold, until he had recovered his own money—if indeed the timber were Philondas' and it had been delivered "for the sake of trade"?[81] [**36**] Again, suppose that Timotheus had not asked my father to supply the transport money for the timber given to him by Amyntas; does it seem likely to any of you that my father would then have trusted Philondas and allowed him to bring it to the defendant's house? And how could Philondas have conveyed the timber "for the sake of trade," as the defendant says, when the latter, upon his return, used this timber to build his own house? [**37**] And consider this, too: while there are many good citizens, his own kinsmen, who took care of Timotheus' affairs when he was out of the country in the King's service, yet no one has dared to give testimony for him, either to say that Philondas did not get the transport money for the timber from the bank, or that he did get it and then paid it back, or again, that any one of them paid the transport money for the tim-

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[80] This is Apollodorus' first mention that Timotheus, by formal act, secured the loan with the timber. A creditor who paid transport money had a right to the cargo by rules of commercial practice, but only for the amount he had lent, not for the full value of the cargo; see Gernet 1959: 23 n. 1.

[81] The speaker alleges (whether true or false) that Pasion agreed to lend the money for transport in the belief that the timber was Timotheus' property and hence was not to be sold. Timotheus, however, had argued that the timber was brought to Athens "for the sake of trade." Cohen 1992: 17–18 points out the significance of the last phrase as depicting a business-related loan (rather than a consumer loan).

ber that Philondas delivered as a gift for Timotheus from Amyntas. No, the kinsmen did not give such testimony—for they put a higher value on their reputations as decent and honest men than on conferring a favor upon Timotheus by giving false testimony. [**38**] Of course they said they wouldn't give true testimony against him—"he's our kinsman," they said.[82] Well then, since no one among the defendant's kinsmen—even though they were looking after his affairs when he was out of the country in the King's service—has dared to testify for him, either that Philondas did not get the transport money for the timber from the bank or that any of them paid for it—surely it's reasonable for you to believe that I'm telling the truth?

[**39**] And certainly he won't dare say that the transport money for the timber that Philondas brought was paid for by someone other than my father! If he does use that argument, ask him also to furnish a deposition from the man who paid the money for the timber; for while it is acknowledged that Timotheus was out of the country in the King's service, yet as for Philondas, the man he sent for the timber and introduced to my father, [*To Timotheus*], you discovered, when you returned from the King, that he was dead. [**40**] Then someone else among the friends and relatives whom you left behind to oversee your affairs when you were about to leave the country must know where Philondas got the transport money to settle with the shipowner—if you say you did not introduce my father to Philondas and he did not get the transport money for the timber from my father. [**41**] Well, you can't provide a deposition from any of your kinsmen that when you were out of the country, the transport money for the timber was not obtained from the bank. Therefore, one of two explanations must be correct: either you have no dealings with any of your relatives and don't trust a single one of them or else, while you are fully aware that Philondas did get the transport money for the timber from my father (to whom you introduced Philondas when you were about to sail away), you still think it right to rob us and make a profit if you can.

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[82] Cf. Dem. 45.55–56 for another example of a relative refusing to testify.

[42] For my part, judges, not only did I provide testimony from the men who were employed at the bank at that time and who handed the money over to those whom the defendant appointed, I also was ready to take a pledge,[83] which the secretary will read to you.

[OATH]

Moreover, judges, my father not only left a written account of the sums owed him, he also told me during his illness what debts were owed him, one by one, and from whom and for what purpose the money was received, and he told my brother as well.[84] And to prove that I'm telling the truth, read my brother's testimony.

[DEPOSITION]

[43] Well then, that Timotheus was left by my father owing us the money for which I am suing him and that this share is mine,[85] both my brother and Phormion who disbursed it have testified, and I was even ready to take a pledge to confirm it. And when the defendant challenged me before the arbitrator and told

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[83]"Pledge" here is equivalent to "oath"; see Dem. 29.26, 33, 54 and 50.31. The phrase here (and cf. 29.54 and 50.31) in effect means, "I challenged him to tender me this oath and I said I would readily swear it." Apollodorus had formulated the oath in advance (presumably, that Timotheus really did borrow the money at issue) and challenged Timotheus to offer it to him during the arbitration that preceded the trial; although Timotheus did not accept the challenge, the oath was included in the documents at the end of the arbitration, and Apollodorus has his unsworn oath read to the court for rhetorical effect. See 49.65, where we learn that Timotheus issued a counter-challenge: Apollodorus should tender him an oath.

[84]The illness is presumably Pasion's last before his death in 370/69; since Pasicles, Apollodorus' brother, was born ca. 380 (see the Introduction to Dem. 45, n. 15), he could not have been more than ten years old at the time.

[85]For Apollodorus' claim to part of this money after his brother had inherited the bank, see the Speech Introduction at nn. 28–30.

me to bring the record books from the bank and demanded copies and sent Phrasierides to the bank,[86] I brought out the books and gave them to Phrasierides to examine and copy out all that Timotheus owed.[87] [*To the secretary*] Please read the deposition that the defendant acknowledged receipt of the copies.

[DEPOSITION]

[44] Well, when I brought the record books before the arbitrator, the men who disbursed the money at Timotheus' bidding, Phormion and Euphraeus, were present;[88] they proved him wrong not only about the dates on which each sum was borrowed but also about the person who received the money and the purpose for which it was used. As for the debt of 1,351 drachmas and 2 obols, the first sum that Timotheus borrowed when he was about to sail away in the month of Munychion during the archonship of Socratides,[89] the sum that he then ordered them to pay to Antimachus, his treasurer—he claimed that my father lent it privately to Antimachus and that he himself did not receive it.

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[86]Phrasierides is mentioned at 50.41 as a syntrierarch in 361/0 who at first failed to meet his obligation. He has been identified as the man who acquired Athenian citizenship (a former slave) with Timotheus' assistance (Dem. 23.202); see *APF* 14976.

[87]For the use of a challenge to acquire a document for use in a lawsuit, see the Introduction to Dem. 45 at nn. 23–24. It is, as Gernet 1959: 25 n. 4 points out, remarkable that the proof from the bank records was only furnished by means of a challenge on the part of the defendant, since he seems to have admitted that the debt was registered in the records (49.59).

[88]Euphraeus is mentioned in Dem. 36.13 and 37 as one of four men who had leased the bank for ten years (362–352) after Pasion's estate had been divided and Pasicles had taken the bank. In Dem. 36.14, the four lessees are said to have been freed because of their service to the bank; the obvious implication is that they had been slaves during the period of the lease. The passage here (referring to 372 BC) shows that Euphraeus had been in the employ of the bank as a slave when Pasion was its owner; see Cohen 1992: 76 and 81–82.

[89]See above, 6n. For this loan, see 49.6–8 with notes.

[45] And he doesn't provide a single witness to prove that he is speaking the truth but uses an argument to make it seem that he is not himself defrauding us but rather that Antimachus borrowed the money. And yet, judges, I'll give you a very good proof that my father lent this money not to Antimachus but to Timotheus when he was about to put to sea. For tell me, which course of action do you suppose would have been easier for my father: to make a claim against Antimachus' estate when it had been confiscated by the city and say that the money had been secured on his property[90] (supposing he really had made a loan to Antimachus!) [46] or to wait until he could count on recovering the money from Timotheus once he had replenished his resources, seeing that he had little hope of salvation at that time? Certainly if he had made a claim on the confiscated property, he would not have been at a loss to pay the deposit fee for the hearing,[91] nor would he have been distrusted by you (for you all know that my father had no appetite for acquiring public property unjustly—no, just the opposite, he was eager to spend his private resources for you, whatever it was you asked).[92] [47] Then, too, Callistratus, the very man who confiscated Antimachus' property, was a good friend of his, and so he wouldn't have opposed him in anything. So what motive could my father possibly have had for leaving Timotheus registered as a debtor to us, instead of recovering his money by claiming it from Antimachus' estate when it was confiscated—unless Timotheus really did owe this money?

[48] I come now to the thousand drachmas. This is the sum he borrowed from Antiphanes in Calaureia to distribute to the Boeotian trierarchs when he was about to sail home for the trial;

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[90]The property of Antimachus (Timotheus' treasurer) had been confiscated as a result of the trial (by *eisangelia*) in 373 (49.10). For the process by which a claim could be made against such property, see Harrison 1971: 180 and 211–217.

[91]A fee (*parakatabolē*) of one-fifth the value of the claim had to be deposited by the claimant; Pasion would of course be able to find the 270 drachmas! If he lost the claim, the sum would be forfeited to the city; see Harrison 1971: 180.

[92]For Pasion's generous public service, see Dem. 45.85.

he then paid the sum to Philip the shipowner here in Athens after he got it from my father.[93] Timotheus claims that the Boeotian admiral did the borrowing and gave my father copper as security for the money. [**49**] But I'll provide a very good proof that he isn't telling the truth. First, it's clear that it was Timotheus, while in Calaureia, who borrowed the thousand drachmas, and not the Boeotian admiral, and second, that Philip, while here in Athens, demanded the thousand drachmas from him and not from the Boeotian admiral and that the defendant, not the Boeotian admiral, paid the money. It's clear, because it was proper procedure for the Boeotian officer to obtain maintenance from Timotheus for the crews aboard his ships since the pay for the expedition derived from common contributions[94] and [*to Timotheus*] it was *you* who collected all the money from the allies, and it was obligatory for *you* to render an account of it. [**50**] Moreover, if the Boeotian ships had disbanded and the crews had scattered, the Boeotian admiral faced no danger from the Athenians nor had he to undergo any trial. But *you* were in the greatest danger. So being full of fear, you thought that it would be a great help to your defense if the Boeotian triremes should stand by until your trial took place.

And so really, by what bond of friendship would my father ever have lent a thousand drachmas to the Boeotian admiral when he didn't even know him? [**51**] No, not friendship—for he claims that the Boeotian admiral secured the loan with *copper*. How much copper—and from what country did it come? And how did this copper end up in the hands of the Boeotian admiral? Was it imported in trade, or did it come from the ransom of prisoners of war? And then who were the men who brought the copper to my father? Hired men or slaves? Or who among our

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[93]A return to his discussion of the second loan (cf. 49.14–21). Apollodorus' attentiveness to date and place of borrowing, as well as to the name of the person who received the money and of the one who was registered as debtor, suggests he may be using his bank records.

[94]These contributions, collected from the allies, are different from the "military fund" mentioned in 49.12 and 16, which was funded from Athenian sources. See the Speech Introduction, n. 11.

slaves received the copper? [52] For if slaves carried the copper for the Boeotian admiral, then he ought to offer them [for interrogation under torture]; but if hired help, then he ought to interrogate our slave, the one who received and weighed it.[95] For I don't suppose that it was without a scale that either the lending party was likely to receive the copper as security or the party pledging the copper, to give it away; nor do I suppose my father was likely to carry the copper and weigh it himself; he had slaves who received the securities for loans. [53] And I personally wonder why the Boeotian admiral would have pledged the copper to my father as security if he owed the thousand drachmas to Philip. Was it because Philip would have been unhappy to earn interest supposing that his money had been lent safely and with security? Or was it because Philip had no money? So why did the Boeotian admiral have to ask my father for the loan of the thousand drachmas and then give the sum to Philip rather than using the copper as security for the alleged loan from Philip?[96] [54] But in fact neither was the copper given as security, judges, nor did the Boeotian admiral borrow the thousand drachmas from my father, but Timotheus here did so because he was in dire straits. I've told you what he used the money for. But instead of repaying the favor of being trusted by my father and receiving loans from him, he even thinks it right to defraud us of the capital, if he can.

[55] Now as for the bowls and the mina of silver that he borrowed from my father on the night when he sent him his attendant Aeschrion:[97] I asked him before the arbitrator whether Aeschrion was still a slave, and I requested that he be put to the proof with his body.[98] When he answered that the man was free, I

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[95]Free men could not be tortured; Apollodorus is searching for a slave to interrogate under torture.

[96]Timotheus claimed that the Boeotian admiral borrowed the thousand drachmas from Philip the shipowner and then borrowed the same sum from Pasion to repay Philip. Apollodorus argues that Timotheus' explanation does not make sense since Philip, as the first creditor, ought to have demanded security from the Boeotian admiral.

[97]A return to his discussion of the third loan (cf. 49.22–24).

[98]I.e., that he be interrogated under torture.

put an end to my request but asked that he put a deposition from Aeschrion into the *echinos* that he was free.[99] [**56**] But he neither furnished a deposition from Aeschrion that he was free nor did he consent to surrender him as a slave for the proof from his body.[100] He feared that if he furnished a deposition from Aeschrion that he was free, I would make a formal objection [*episkēpsis*] that the testimony was false, and after obtaining Aeschrion's conviction for testifying falsely, I would proceed against him in accordance with the law that prohibits the suborning of witnesses;[101] if, on the other hand, he should surrender him as a slave for interrogation under torture, he feared that Aeschrion would tell the truth against him. [**57**] And yet if he could not provide witnesses for the other receipts of money, it would have helped his case to prove at least this much with a statement from Aeschrion: that neither the bowls nor the mina of silver had been received, and that Aeschrion himself had not been sent by the defendant to my father; and it would have helped his case even further to have used this material as evidence that my other claims about him are also false, on the grounds that Timotheus' slave, whom I say took the bowls and mina of silver, was shown not to have taken them when he was questioned under torture. [**58**] If, then, this would have been a reliable proof for him to use before you, that he offered to surrender Aeschrion, the man whom I say had been sent by him to take the bowls from my father and to borrow the mina of silver, then let this be an argument for me, too, to use before you: the fact that Timotheus does not dare surrender Aeschrion for torture because he knows my claims are true.

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[99] An *echinos* is a pot with a lid, used to preserve documents for trial; see 39.17n.

[100] Although 49.55–58 have to do with Apollodorus' challenge to Timotheus to put Aeschrion to torture, Apollodorus himself offers no witness testimony, neither for the challenge nor for the reason for its revocation, that Aeschrion was free. Such testimony, as Thür 1977: 134–135 suggests, would put the witness at risk: witnesses to revoked challenges, esp. those in which the status of the person to be tortured is disputed, are susceptible to charges of false testimony (e.g., Dem. 29, 45, 46, and 47.15).

[101] See Dem. 47.1n.

[**59**] Well then, he will try to defend himself by saying that in the bank's records, he was registered during the archonship of Alcisthenes[102] as the person who received both the transport money for the timber and the price of the bowls that my father paid to Timosthenes on his behalf and that at this date, he himself was not in the country, but in the King's service. Indeed, I want to instruct you clearly in this matter so you may know exactly the way records from the bank are kept. [**60**] For in the month of Thargelion during the archonship of Asteius,[103] when Timotheus was about to put to sea to join the King's service, he introduced Philondas to my father. And in the following year in the archonship of Alcisthenes, Philondas arrived with the timber from Macedonia and received the transport money for the timber from my father since Timotheus was out of the country in the King's service. So they wrote down Timotheus' name as the debtor when they were handing over the money, not when he was still in Athens and had introduced Philondas to my father.[104] [**61**] For when Timotheus introduced Philondas, the timber had not yet reached Athens but Philondas was about to go and get it. And when he came back with the timber, Timotheus was out of the country and Philondas received the transport money just as the defendant had ordered, and Philondas brought the timber to his house in Piraeus. And that Timotheus was not in good financial shape when he was sailing away from here, you yourselves know—at least those among you to whom he had mortgaged his property, whom he is now trying to defraud;[105] [*to the secretary*] but please read the testimony that you may know that he also borrowed money from

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[102]In 372/1.

[103]In 373/2; see 49.22n.

[104]Cf. Dem. 52.4, where the practice involves writing down the names of a depositor and a third party who is to be paid the deposit, and additionally the name of the person who is to introduce the "third party" if that person is unknown to the bankers. Accordingly, the introducer's name is written down *before* the payment takes place. The different procedure may be due to the nature of the transaction: in Dem. 52, it is a question of a client's deposit, and in this speech, a banker's loan.

[105]See 49.12n.

some citizens without providing security since he had nothing of comparable value with which to mortgage his debts.

[TESTIMONY]

[62] To return to the bowls: while Timotheus' attendant Aeschrion had requested them in the month of Maemacterion in the archonship of Asteius[106] when Timotheus was in Athens and had entertained Alcetas and Jason, yet he was recorded as owing the value of the bowls in the archonship of Alcisthenes.[107] For a while my father thought Timotheus would return the bowls he had borrowed. But after he left and had not returned the bowls and Timosthenes' bowls were no longer in Phormion's keeping and Timosthenes, the depositor of the bowls, returned and requested them, my father paid him the value of the bowls and recorded Timotheus as owing him this sum over and above the rest of the debt. [63] And so if he uses this as a defense, that he was not in Athens at the time when he was recorded as owing the price of the bowls, reply that "you received them while you were in Athens, and when you did not return them and went abroad and the bowls requested by their depositor were not on hand, you were recorded as owing the price that had been paid for the bowls." [64] Yet, by Zeus, perhaps he'll say my father ought to have asked him for the bowls! But he saw that you couldn't make ends meet. And so, while my father trusted you for the rest of the debt and thought that he would recover it when you returned to Athens and were on your feet again, was he going to distrust you with regard to the bowls? And did he promise at your request to furnish the transport money for the timber as you were embarking for the King—but because of the bowls, because of just two bowls—was

[106] In 373/2; see 49.22n.

[107] Timotheus was "registered" as debtor for the price of the bowls not at the time he borrowed them (for Pasion thought they would be returned, as the cloaks and bedding had been) but in the following year when he could not restore them; i.e., objects were not charged as debts by the banker until they were missing, but monetary loans were registered when they were paid out. See 49.22–24 and 31–33.

he going to distrust you? And while he wasn't going after you for the rest of the debt, seeing your financial straits, was he going to do so for the bowls?

[**65**] Furthermore, I also want to mention the challenge to the oath that I issued him and he issued me.[108] For after I put my oath into the *echinos*, the defendant thought that he, too, by swearing an oath, would be released from all these claims. If I hadn't known that he had openly foresworn himself on many occasions with powerful oaths both to cities and to individuals, I would have offered him the oath. But as I saw it, since I had witnesses to attest that the men he had appointed to be given the money from the bank had received it and since there were convincing circumstantial proofs, I thought it appalling to tender an oath to this man, who not only would have no intention of swearing honestly but who has not even refrained from sacrilege itself when it comes to matters of gain.

[**66**] It would be a long tally to count up the oaths, one by one, which the defendant has casually foresworn. But I'll recall only the most notorious ones, the oaths you all know he foreswore. For you know he swore an oath in the Assembly calling down curses and destruction on himself[109] and consecrating his property[110] if he should fail to indict Iphicrates for usurping the rights of citizenship.[111] And not long after swearing and promising this in the Assembly, he looked to his own advantage and gave his daughter as wife to Iphicrates' son. [**67**] In the case of a man, then, who felt no shame in deceiving you when making a promise, although there are laws saying if a man should deceive the people with a

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[108] See 49.42.

[109] Oaths of this type appear not infrequently in the orators (e.g., Dem. 21.119, 57.22). Its most solemn use perhaps occurs at the onset of a homicide trial in the Areopagus, where the accuser swears the oath standing over the entrails of a boar, a ram, and a bull (23.67, but cf. Aes. 1.114).

[110] That Timotheus should have threatened to "consecrate" his property suggests that at this time he did have real property.

[111] The indictment is called a *graphē xenias*. Scholars have offered different explanations for the possible grounds of Timotheus' charge against Iphicrates: see Davies 1971: 250.

promise, he is liable to a denunciation [*eisangelia*],[112]—and a man who showed no fear of the gods whom he foreswore when he took an oath and called down destruction upon himself, was I unreasonable to refuse to offer him an oath? Again, not much time has passed since he once more solemnly swore he didn't have sufficient maintenance for his old age—although he possesses so large an estate.[113] So insatiably and shamelessly greedy is he at heart!

[**68**] I would gladly learn from you whether you feel anger at men whose banks collapse;[114] for if you are justified in being angry at them because they wrong you, isn't it reasonable for you to give assistance to those bankers who don't wrong you? And truly, these are the men to blame for bank failures—men who borrow whenever they are in need and think they should obtain credit on the basis of their reputation—whereas when their affairs are back in shape, they don't pay up and instead try to defraud their creditors of their money.

[**69**] Well then, judges, testimony has been given to all matters for which I could supply witnesses. Beyond that, on the basis of circumstantial proofs, I've shown you that Timotheus owes my father money. I therefore ask your aid in exacting from debtors the property my father left behind for me.

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[112]This law is paraphrased in Dem. 20.100 and 135.

[113]Timotheus may indeed have enriched himself while in Egypt in the King's service. His subsequent wealth appears to have been more land based than cash based; for an assessment, see Davies 1971: 510.

[114]Bank failures are occasionally mentioned in our sources, e.g., Dem. 36.50 and 45.63–64. See Cohen 1992: 215–224.

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APF: See J. K. Davies, below. Abbreviation plus number indicates an entry for individuals or families.

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